

No. 11990

United States
Court of Appeals

for the Ninth Circuit

ESTELLA LATTA, JONES M. GRIFFIN and
ALWIN CHAMBERS,

Appellants,

vs.

WESTERN INVESTMENT COMPANY,
a Corporation, et al.,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Northern Division

FILED
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PAUL P. O'BRIEN,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the Northern Division of the United States District Court for the Northern District of California.

ESTELLA LATTA, JONES M. GRIFFIN and
ALWIN CHAMBERS,

Plaintiffs,

vs.

WESTERN INVESTMENT COMPANY, a corporation, SACRAMENTO INVESTMENT COMPANY, a corporation; VERA PENIX, WALTER FONG, CLAUDE A. and VERA G. BEAGLE, FRED BARDONI, JOSEPH and MATILDA DEVINCENZI, ROGER L. and MARIE BONDI, VERNE and VERA M. LEWIS, JENNIE T. STOLL, FRED FONG, GRACE LEE, CONFUCIUS CHURCH OF SACRAMENTO, GERTRUDE KAHN, JEAN LILLARD, FONG TEUNG, QUONG FONG, MAYNGO VINCENTE, ARMADE ZAMBRA, IRA JONES, JOHN V. NOONAN, BRUSILLA N. PEIP, and LOUIS H. MARKS, CHARLES S. HOWARD COMPANY, INC., THE SOUTHERN PACIFIC RAILROAD COMPANY, a corporation, THE CENTRAL PACIFIC RAILROAD COMPANY, a corporation, FIRST DOE, SECOND DOE, THIRD DOE, BLACK & WHITE, a corporation, BLUE AND GOLD, a corporation, and THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO,

Defendants.

COMPLAINT

For Declaratory and Other Relief

Plaintiffs complain of defendants and for cause of action allege:

1.

That the plaintiffs, Estella Latta, Jones M. Griffin and Alwin Chambers appear herein as plaintiffs for themselves and for all other heirs of Mark Hopkins, similarly situated whose names are set forth in exhibit "F" and annexed hereto and made a part hereof. That the other heirs of Mark Hopkins [1*] are so numerous, it is impracticable to bring them all before the Court, that the questions involved are of a common interest to all the heirs of Mark Hopkins, deceased.

2.

That plaintiffs, Estella Latta, Jones M. Griffin and Alwin Chambers are residents of the State of North Carolina; that all of the persons whose names are set forth in exhibit "F" are residents of States other than the State of California.

3.

That the names First Doe, Second Doe, Third Doe, and Black and White, and Blue & Gold Corporations are fictitious and are used to designate defendants whose true names are not known to plaintiffs, and that when such names are learned plaintiffs will ask leave to amend accordingly.

*Page numbering appearing at foot of page of original certified Transcript of Record.

4.

That Charles S. Howard and Company is a corporation duly organized and incorporated under and by virtue of the laws of the State of California and doing business in the County of Sacramento, State of California.

5.

That the Western Investment Company is a corporation organized and existing under the laws of the State of California, and domesticated and doing business in the State of California.

6.

That the Sacramento Investment Company is a Corporation duly organized and incorporated under and by virtue of the laws of the State of California and doing business in the County of Sacramento, California.

7.

That the Southern Pacific Railroad Company is a Corporation doing business in the State [2] of California with its principal office located in the City of San Francisco.

8.

That the Central Pacific Railroad Company is a Corporation operating and doing business in the State of California with its principal office located in the City of San Francisco.

9.

That Sacramento Investment Company, a Corporation: Vera Penix, Walter Fong, Claude A. and Vera G. Beagle, Fred Bardoni, Joseph and Matilda Devincenzi, Roger L. and Marie Bondi,

Verne and Vera M. Lewis, Jennie T. Stoll, Fred Fong, Grace Lee, Confucius Church of Sacramento, Gertrude Kahn, Jean Lillard, Fong Teung, Quong Fong, Mayngo Vincente, Armade Zambra, Ira Jones, John V. Noonan, Drusilla N. Peig, and Louis H. Marks, all are residents of the County of Sacramento, State of California.

10.

That this is a suit of a civil nature in equity for declaratory relief determining the validity of the purported decree of distribution in the matter of the estate of Mark Hopkins, deceased and determining the rights of the plaintiffs in the property both real and personal herein described, and hereafter discovered belonging to the Estate of Mark Hopkins, deceased; that an actual controversy exists relating to the legal rights and duties of the respective parties, under said purported decree of distribution; that the matters in controversy exceed exclusive of interest and costs, the sum or value in excess of Three Thousand (\$3,000.00) dollars; that the issues involved in this action are between the parties plaintiffs and the parties defendants, and between citizens of different states.

11.

That Mark Hopkins died intestate on or about the 29th day of March 1878, and was at the time of his death, and for some time prior thereto, a resident of the County of San Francisco, State of California, [3] that said decedent left neither father nor mother nor issue surviving him.

12.

That said decedent left property both real and personal in the State of California and in other States, the exact amount or value of which is unknown to your plaintiffs.

13.

That subsequent to the death of said Mark Hopkins, one Mary Frances Sherwood, under the name of Mary Frances Sherwood-Hopkins filed in the Probate Court of San Francisco her application for Letters of Administration of the estate of Mark Hopkins, deceased; that said application came on for hearing on or about the third day of June, 1878. purported Letters of Administration were issued to said petitioner thereupon.

14.

That the said Mark Hopkins died leaving the following heirs at law: Moses Hopkins, James Hopkins, John Hopkins, Martin Hopkins, Joseph Hopkins, Annie Hopkins Russell, Prudence Hopkins Russell, and Rebecca Hopkins Griffin, who were the brothers and sisters of the deceased.

That the Superior Court of the City and County of San Francisco was without jurisdiction to issue said Letters of Administration, in that the hearing on said application for Letters of Administration was had without notice having been given to the legal heirs of said decedent as required by the law governing, and more particularly as follows:

That at the time of the filing by said Mary Frances Sherwood-Hopkins of her application for Letters of Administration, said applicant well knew

the names and addresses of the true and lawful heirs of said decedent; that said applicant willfully, knowingly, and with intent to defraud said lawful heirs, and to deceive the Honorable Superior Court, of the City and County of San Francisco concealed from the said Court and from the Clerk thereof the [4] names and addresses of the said brothers and sisters of said Mark Hopkins, except only Moses Hopkins, that by reason of said fraud of said applicant upon the court and said heirs, the Clerk of said court failed to mail to said heirs except to Moses Hopkins notice of said hearing or notice of the time and place of said hearing, and that the said heirs others than Moses Hopkins, received no notice thereof either directly or indirectly and said heirs never knew of said hearing. That the purported decree of Distribution, hereinafter referred to and a copy thereof attached and made a part hereof marked Exhibit "A", affirmatively shows on its face that no notice was given the Plaintiffs or their Ancestor, the heirs of Mark Hopkins.

16.

That under and pursuant to said purported Letters of Administration to her issued by said Court, said Mary Frances Sherwood-Hopkins administered the estate of said decedent until her removal as administratrix on or about the 26th day of August, 1881, that immediately thereafter Moses Hopkins filed application for letters of Administration in said Court, and was granted purported letters of Administration, and thereafter acted as administrator of said estate.

17.

That at the time of the filing of his said application for Letters, said Moses Hopkins well knew the names and addresses of his four brothers and three sisters, above named, but knowingly and willfully, and with the intent to defraud and deceive, concealed from the Court and from the Clerk thereof the names and addresses of said legal heirs; that by reason of said fraud of said applicant upon the said Court and Clerk and said heirs, the Clerk of said Court failed to mail to said heirs notice of said hearing or the time and place of said hearing, and that the said heirs received no notice thereof either directly or indirectly and never knew of said hearing. That the decree of distribution herein above referred to affirmatively shows on its face that Moses Hopkins failed to comply with the law existing at the time of filing said application for the appointment as administrator; and that he failed to furnish the court with the names and addresses of the heirs; [5] his brothers and sisters, and that no notice was given to them as required by law.

18.

That under and pursuant to said purported Letters of Administration, said Moses Hopkins administered said estate, and some time prior to the first day of November, 1883, applied to said Court for a decree of settlement of account and distribution of said estate, that Plaintiffs and other legal heirs of the estate of Mark Hopkins or their ancestor did not receive, and none of them did receive, any notice, legal or otherwise, of said petition for

settlement of account and final distribution, or of the time and place of hearing thereof, as is shown on the face of the decree, and never knew of said hearing of said account and petition for distribution and never knew that said purported decree of distribution had been ordered or made or entered.

19.

Plaintiffs allege that the purported decree of distribution rendered on the 1st day of November, 1883, five years after the death of the deceased is void for the following reason, to-wit:

“A”. That in the first paragraph of the purported decree the statement is made, “that the administrator rendered a full account and report of his administration.” This statement is untrue as will appear more particularly in sub-paragraph F and G of this Complaint.

“B”. That in the Second Paragraph of said decree the statement is made, “That the clerk has given notice of settlement.” The said decree affirmatively shows on its face that no notice was given to all the heirs as required by law existing at that time. The law at that time, 1878, required the administrator at the time of making application for letters of administration to furnish the Clerk of the Court, the names and addresses of all the heirs. Then it was the duty of the clerk to mail notice to each of said heirs or legatees. That this was not done is shown on the face of said decree.

“C”. In the third Paragraph of said decree the Court, in legal effect, finds Mary Frances Sherwood-Hopkins [6] to be the only person interested in the

said estate except the administrator. This finding which is untrue, must be taken to be based upon the false statements and mis-representation of said administrator. Moses Hopkins, said Administrator, well knew the names of his brothers and sisters, the legal heirs of Mark Hopkins, deceased, and their Post Office Addresses and said statements and mis-representations was a fraud upon the court and upon said heirs, conceived and perpetuated by Moses Hopkins and Mary Frances Sherwood-Hopkins who were acting in a fiduciary capacity at that time for the purpose of depriving said heirs of their rightful inheritance.

“D”. That in the fourth paragraph of said decree, it appears that the residue of money in the hands of the administrator at the time of filing his account was the sum of Eight Hundred Ninety-five Thousand and Seventy-eight Dollars and one cent (\$899,078.01) and that after the rendition of said account he had received the additional sum of Eight Hundred Sixteen (\$16.00) and in paragraph VIII of the decree in the purported distribution of said funds, only Eight Hundred Ninety-five Thousand, Seventy-eight Dollars and one cent (\$895,078.01) was distributed by the Court, leaving the sum of Eight Hundred Sixteen Dollars (\$816.00) in the hands of the administrator undistributed and unaccounted for in said decree of distribution.

“E”. That in the seventh paragraph of said decree, the Court made the following order: “That ($\frac{3}{4}$) fourth of said estate be distributed to the widow, Mary Frances Sherwood-Hopkins, and ($\frac{1}{4}$)

One Fourth of said estate be distributed to the brother of said deceased, Moses Hopkins.” Plaintiffs, as hereinafter set forth, allege that said Mary Frances Sherwood-Hopkins was not the wife of the decedent nor an heir, or entitled to said estate or any part thereof. Under the laws existing in 1878 the widow of a decedent who died intestate was entitled to ($\frac{1}{2}$) One-half only of the decedent’s estate Plaintiffs allege that upon the face of the decree it appears that the court exceeded its jurisdiction in the purported distribution of ($\frac{3}{4}$) Three-fourths of said estate to the alleged widow of the decedent.

“F”. In the Eighth Paragraph of said decree the Court attempted to distribute the personal [7] property but failed to apportion the securities to the purported distributees respectively.

The said personal property set out in the decree and attempted to be distributed is as follows: “The following is a particular description of the said residue of said Estate referred to in this decree and of which distribution is now ordered as aforesaid. \$895,078.01 in gold coin of the United States, cash in the hands of said Administrator, 586 $\frac{1}{4}$ shares of the capital stock of the Copperopolis Railroad Company, 350 shares of the Capital Stock of the Los Angeles and San Diego Railroad Company, 750 shares of the Capital Stock of the Potrero and Bay View Railroad Company, 10,000 shares of the Capital Stock of the Occidental and Oriental Steamship Company, 750 shares of the Capital Stock of the California Pacific Company, 102 shares of the Capi-

tal Stock of the Rocky Mountain Coal and Iron Company, 1388 $\frac{8}{9}$ shares of the Eastern Development Company, $\frac{1}{4}$ of 393 Bonds of the Sacramento Valley Railroad Company, 1 share of the Capital Stock of the Orleans Hill Vinticultural Association." That the said Copperopolis Railroad Company, The Los Angeles and San Diego Railroad Company, The Potrero and Bay View Railroad Company, The California Pacific Company, and The Sacramento Valley Railroad Co. above described and the stocks therein above described were non existent at the time of the death of Mark Hopkins; that said Railroad companies, many years prior to the death of the said Mark Hopkins, had been consolidated with and absorbed by the Southern Pacific Railroad Company, and Stocks of the Southern Pacific Railroad Company of the value of \$24,940,597.29, issued to Mark Hopkins, issued in lieu thereof, and Southern Pacific stock so issued to Mark Hopkins, and appraised in the inventory and appraisement filed by said appraisers appointed by the court as to the value of \$24,940,597.29 was known to said administrator but was not distributed or accounted for in said purported decree of distribution.

"G". That prior to and before November 1, 1883, and at the time of filing of the said final report by the said administrator and the signing of the purported decree, the administrator, Moses Hopkins, knew of and was in possession of, as these plaintiffs are informed believe and upon such information and belief allege, of the following assets

[8] discovered to date hereof consisting of cash on hand, stocks, and bonds and other personal property unreported and undistributed by the said decree, to-wit:

Cash on hand.....	816.00
Southern Pacific Railroad Interest...\$	4,917,366.00
Central Pacific Railroad Interest....	1,455,000.00
Santa Fe O. and A. Railroad.....	100,000.00
Berkeley Railroad	22,000.00
Amador Railroad	112,000.00
Central Pacific (Convertible).....	5,500.00
Sacramento and Placerville Railroad.	87,500.00
United States 4 per cent Bond.....	129,378.00

The following shows personal property belonging to the estate.

Central Pacific Railroad.....	5,140,600.00
Southern Pacific Railroad.....	1,996,250.00
Sacramento and Placerville.....	40,950.00
Amador Railroad	22,470.00
Berkeley Railroad	5,550.00
Market Street Railroad.....	136,960.00
Mission Bay Bridge Company.....	20,930.00
Colorado Steamship Navigation.....	6,666.00
Tone Coal and Iron Company.....	16,000.00
Oakland Water Front Company.....	182,350.00
Capital Gas Company of Sacramento.	35,812.00
Lonner Lumber and Brown Company	1,620.00
Omaha Gold Mining Company.....	2,100.00
Richelieu Mining Company.....	534.00
Capital Savings Bank of Sacramento	79,180.00

Home Mutual Life Insurance Company	250.00
Riverside Road Company of Sacramento	100.00
Stocks, Bonds and etc. owned Jointly by the estate with Stanford, Hunt- ington & Crocker.....	1,450,956.04
Live Stock and Wagons, etc.....	9,781.00
Household Furniture	247,945.34
Real Estate	909,109.88
Bills Receivable	558,690.90
Open Accounts	2,719,728.90
Cash and Bills Receivable Owned jointly by the estate with E. J. Miller, Jr. and others.....	7,433.36
Debts due the estate in the amount of	2,092,294.48
From the London and San Francisco Bank	21,885.70
From the Central Pacific Railroad Company	200,498.22
Capital Savings Bank at Sacramento.	341,070.50
The Undivided One Quarter Interest on a note of David D. Colton dated October 5, 1874.....	1,000,000.00
Note Daniel Click.....	52,959.00
Note of Central Pacific Railroad Com- pany to Huntington Hopkins Com- pany	227,899.23
Note of E. W. Hopkins.....	11,000.00

Note from Leland Stanford in favor of Hunting and Hopkins which is outlawed	32,462.82
Stock in the Ione Coal and Iron Com- pany	400,000.00
	<hr/>
	\$24,940,592.29

That the said Moses Hopkins, as such administrator, fraudulently failed and neglected to account for any of said personal property last above described of the appraisal value of \$24,940,597.29, and said personal property of the value of \$24,940,597.29, was not distributed or accounted for in said purported decree of distribution.

“H”. That in the ninth Paragraph of the said decree the Court recognized an agreement between Mary Frances Sherwood-Hopkins, Moses and Samuel Hopkins, in which they agreed that the Court might distribute the real estate to Mary Frances Sherwood-Hopkins, and in the 10th paragraph the court refers to a deed executed by Moses and Samuel Hopkins to Mary Frances Sherwood-Hopkins, a copy of said deed is hereto attached and made a part of this complaint for the purpose of attack, and designated as exhibit “B”.

That in the Eleventh paragraph of the said decree, the Court attempted to distribute the real estate to the said Mary Frances Sherwood-Hopkins, pursuant to the terms of said deed and attempted to ratify the deed herein referred to. Plaintiffs allege that the attempted transfer of the title to

said real estate was and is void. That the deed herein referred to from Moses and Samuel Hopkins to Mary Frances Sherwood-Hopkins which is a part of the judgment [10] Roll on which the decree is based is void and of no effect for lack of description of said real property which is apparent on the face of the deed, that the court could not ratify a void Instrument; that the decree fails to describe the property attempted to be transferred or to refer to any instrument that does describe said property.

“I”. That in the sixth paragraph of said purported decree the court said, “that the account of the said administrator be and the same is hereby settled, allowed and approved, and the residue of said estate hereinafter particularly described and any other property not now known or discovered, which may belong to said estate or in which said estate may have any interest, be and the same is hereby distributed as follows: Three fourths, ($\frac{3}{4}$), to Mary Frances Sherwood-Hopkins and one fourth, ($\frac{1}{4}$) to Moses Hopkins.”

That at said date all of the personal property of said estate herein before described as well as the real estate hereinafter described was known to and in the possession of the administrator, Moses Hopkins.

That there was no agreement between the parties, mentioned in the decree as to the distribution of the personal property, and under the law governing the said Mary Frances Sherwood-Hopkins, if she was the wife of Mark Hopkins was only entitled to One half, ($\frac{1}{2}$) of said estate and the court ex-

ceeded its jurisdiction in distributing Three fourths, ($\frac{3}{4}$) thereof to her.

“J”. That said decree is indefinite as to the heirship and purported distribution attempted to have been made by said decree.

“K”. That said decree was rendered November 1, 1883, more than five years after the death of the deceased and the plaintiffs are informed, believe and so allege on information and belief that the court immediately after the death of Mark Hopkins appointed A. J. Bryant, R. B. Ridding, and E. J. Miller, Jr. appraisers of the estate of the deceased, Mark Hopkins, and that on or about May 5, 1878, a full and complete inventory of the property was filed in the court setting out all the personal property of the estate and placing a valuation on same; and that [11] the administrator, knew of the property of which the estate consisted; and that there was no unknown property at the filing date of said final account and the date of the signing of said decree of distribution.

“L”. That the decree fails to establish the heirship, while it states that Mary Frances Sherwood-Hopkins and the administrator, Moses Hopkins, are the only interested parties. It does not determine what interest they were entitled to under the law or that they were the only heirs; or in what manner they were interested; said holdings by the court, based upon false and fraudulent concealment and suppression by the said Mary Frances Sherwood-Hopkins and Moses Hopkins, of the names and addresses of the heirs of Mark Hopkins, was a

fraud upon the court and the heirs interested in said estate.

That as to the property heretofore and hereinafter set out that was not included in the account or inventory filed with the court on which the said decree was based, there has been no distribution made of same and said property is now a part of the estate of Mark Hopkins, deceased.

“M”. That the said administratrix, Mary Frances Sherwood-Hopkins, and the said administrator, Moses Hopkins conceived and formed the purpose of deceiving the court before which the said estate was being probated, and in pursuance of said fraudulent intent and scheme withheld from said court at the time of the settlement of said account and purported distribution of the said estate, the fact that the said deceased had left property other than that reported, which property so reported was a minor portion of said estate, and the said administrator, Moses Hopkins, in returning his account of said estate and also in his petition for distribution therein, falsely and fraudulently represented to said Court that the said deceased had no interest in or to any other property except that reported, and that he purposely and falsely and fraudulently with intent to deceive said court and to defraud the heirs of the deceased of their portion of said estate, failed to set forth or disclose in the final account and petition for distribution therein, the existence of millions of dollars worth of personal property of said deceased herein above set forth, and failed to report to said court a vast amount of real estate and

the proceeds of the sale of that part thereof that had been sold and transferred [12] by said administrator and administratrix without any order of the Superior Court as herein set forth. That Moses and Mary Frances Sherwood-Hopkins, prior to the signing of said decree as herein alleged in plaintiffs' second and third causes of action failed to set out and describe other real estate owned by the deceased personally and in which he had an interest, and the fact that the same was a portion of his estate. That the said court in the course of the probate of said estate, was deceived and misled by the said administrator, Moses Hopkins's fraudulent acts and practice and attempted to distribute the entire estate of the deceased to the administrator, Moses Hopkins and the former administratrix Mary Frances Sherwood-Hopkins, to the exclusion of all the aforesaid heirs of said deceased, whom the said administrator, Moses Hopkins, knew, and was under the legal duty to protect.

That at and during the whole period of probate of said estate the brothers and sisters, the heirs of the deceased other than Moses Hopkins, were not residents of the State of California, and were absent therefrom, and that none of them had any notice or knowledge and never knew of the aforesaid false and fraudulent acts of said administrator, Moses Hopkins, particularly of the filing of the false and fraudulent account and petition for distribution or of the contents thereof, or of the hearing thereon, and that in consequence thereof, said heirs were not present or represented at said hear-

ing nor in making or filing of said decree of distribution. That the said administrator, Moses Hopkins, and the said Mary Frances Sherwood-Hopkins, conspiring together, sought to appropriate to themselves by said purported Decree of Distribution, the entire Estate of Mark Hopkins, deceased. In contravention of the rights and interest of the legal heirs.

That the said Moses Hopkins, administrator, occupied another and more vital relation to the heirs, being a brother, and as acting as their representative, as administrator, assumed a legal duty and was bound to the utmost good faith and it became his duty, not only during and through the course of the probate of said estate, to make full disclosure to the court and to those heirs, his brothers and sisters, as to the nature, extent and character of said estate, and fully inform them of their rights in the premises to the end that their rights be fully protected.

20.

That by reason of the facts as herein alleged, the brothers and sisters of said Mark Hopkins whose descendants, are the plaintiffs, were deprived of their property rights, and their vested interest in the estate of said deceased, Mark Hopkins, without due Process of Law in contravention of the laws of the State of California and the Constitution of said State and in violation of the Constitution of the United States and the Amendments thereto.

21.

The Plaintiffs further allege that neither the said Mary Frances Sherwood-Hopkins nor the said

Moses Hopkins, at any time prior to or during the probate proceedings therein, notified said legal heirs, or any of them of the death of their brother, Mark Hopkins, or of the administration of the estate or of the distribution thereof, but kept said facts a closed secret until the early eighties, after the death of some of the brothers and a sister, and that when one of the heirs learned of the death of their relative, Mark Hopkins, and wrote for information relative to the estate he received a reply from Moses Hopkins, stating that his brother, Mark Hopkins, had died leaving a wife and nine children.

22.

That in the early eighties one Zebedee Russell, a relative of Mark Hopkins, had information that Mark Hopkins had died, and on receiving such information said relative wrote to Moses Hopkins requesting information as to the death of Mark Hopkins and as to his estate; that said Zebedee Russell received a reply from said Moses Hopkins that his brother, Mark Hopkins had died and had willed all of his estate to him, the said Moses Hopkins.

That said information coming from Moses Hopkins who occupied a fiduciary relation with said heirs was by them believed; that said heirs had no occasion even to suspect that the statements contained in said letters were not true as to the wife and nine children, and had died leaving a will, believed and relied on said statements and were lulled to sleep and abandoned the idea of making further investigation of said estate until years later when they [14] discovered said statements were false and

made for the purpose of deceiving the heirs at law, and the heirs were thereby deceived. That in 1945 upon the discovery that said statements were false, the legal heirs of Mark Hopkins immediately employed counsel and proceeded to unfold the secret schemes, fraud, and misrepresentation by and between Mary Frances Sherwood and Moses Hopkins, and to assert their rights in and to said estate.

23.

That by reason of the fact that the ancestors of the Plaintiff lived more than three thousand miles from the scene of action and owing to the mode of travel and mail facilities back in the pioneer days of California in 1878 and immediately following, said Moses Hopkins and Mary Frances Sherwood-Hopkins were afforded ample opportunity to prosecute their deceptive and fraudulent scheme without the knowledge of said heirs.

24.

Plaintiffs further allege that on April 5, 1879, prior to his appointment as administrator, the said Moses Hopkins, together with Mary Frances Sherwood-Hopkins and one Samuel F. Hopkins, executed a deed in Sacramento, California, to Collis P. Huntington, Charles Miller, Albert Gallatin, and W. R. S. Foye to and for a number of lots and parcels of land located in Sacramento and San Francisco, California, hereinafter described in Plaintiffs' Third Cause of action and by reference made a part hereof; stating in the body of said deed that they were the wife and brother of Mark Hopkins and constituted the only heirs of the deceased; that

said statements were false and fraudulent; that said Samuel Hopkins was not an heir or the son of an heir of Mark Hopkins.

25.

That on March 13, 1880, the said Moses and Samuel Hopkins executed a deed to Mary Frances Sherwood-Hopkins purporting to convey to her a one-eighth interest each of all their right, title, and interest in and to all the real estate owned by Mark Hopkins, deceased. Said deed is hereto attached marked Exhibit "B" and made a part hereof. That said deed was executed prior to the appointment of [15] Moses Hopkins as administrator of said estate. That at the time of the execution of said deed, said Mary Frances Sherwood-Hopkins was acting as administratrix of said estate under the purported Letters of Administration theretofore issued by said Court; that by virtue of said Letters of Administration said Mary Frances Sherwood-Hopkins occupied a fiduciary relation and a position of trust as between herself and the legal heirs of Mark Hopkins, deceased. That Samuel Hopkins, one of the purported grantors name in said deed, had no interest in said estate and was not an heir of Mark Hopkins.

26.

That Plaintiffs are informed believe and allege on information and belief that the said Mary Frances Sherwood-Hopkins was never married to the late Mark Hopkins and was not his wife; but as the Plaintiffs are informed, believe and allege on information and belief, was the housekeeper in the home of Mark Hopkins and knew of the relationship of

Mark Hopkins and his kindred in North Carolina. That in order to perpetrate the scheme to defraud the legal heirs of Mark Hopkins, to-wit, brothers and sisters in North Carolina, Moses Hopkins entered into the scheme and an agreement with the said Mary Frances Sherwood-Hopkins to the effect that if she would aid and abet him in his unlawful scheme he would give her three-fourths of said estate. That Mary Frances Sherwood-Hopkins did aid and abet Moses Hopkins in said fraudulent scheme and entered into the said unlawful agreement upon which the decree of distribution of the Court was based, as aforesaid, by suppressing and concealing from the Court the facts relative to the heirship and rights of the heirs of Mark Hopkins, that by reason of the said acts of Moses Hopkins and Mary Frances Sherwood-Hopkins, a fraud was practiced upon the Court and upon the Plaintiffs and their ancestors. These facts were not discovered by the Plaintiffs or their predecessors heirs of Mark Hopkins, or by any of them until September, 1945.

27.

That at the time the said Moses Hopkins applied for Letters of Administration and during his tenure as administrator, and at the time he made [16] application for distribution and when the Court signed the decree, purporting to make distribution of the property and assets of said estate, and at the time of the execution of the deed to Collis P. Huntington, et al., stating that Mary Frances Sherwood-Hopkins was the wife of Mark Hopkins and

that they were the only heirs of Mark Hopkins, as herein before stated, Moses Hopkins knew of his own knowledge of the four brothers, and three sisters and knew that they lived in Randolph County, North Carolina and purposely concealed and suppressed said facts with the intention and purpose of deceiving the Court and defrauding the legal heirs of their rights and interest in said estate, and did deceive the Court and defraud said heirs of their interest in said estate as aforesaid.

28.

That the said fraudulent acts of Mary Frances Sherwood-Hopkins in fraudulently representing herself to be the wife of the said Mark Hopkins were not discovered by the Plaintiff or their predecessors or by any of them until 1945 when Plaintiffs discovered that she was only the housekeeper in the home of the said Mark Hopkins.

29.

The Plaintiffs and their Ancestors and each of them have used due diligence in seeking to have determined and to enforce their rights as heirs to said estate. That the files and records of the probate proceedings deeds and other documents and all information pertaining to the estate and the probate thereof were destroyed by fire in 1906, long before the Plaintiff or their ancestors had any knowledge of the facts regarding said estate. There were no records in the Court where the probate proceedings were had wherein the plaintiffs or their ancestors could secure the information necessary to prosecute their action for relief.

That by chance in August in 1945, the Plaintiffs after long research discovered the deed, above referred to recorded in the County of Sacramento from Mary Frances Sherwood, Samuel and Moses Hopkins, to Huntington et al., that threw some light on the estate, and in 1945, a deed was discovered in Stockton, San Joaquin County, with other facts pertaining to said estate, and in 1945 the Plaintiffs [17] discovered in Kern County other information pertaining to said estate, and a purported copy of the inventory filed in said estate was discovered by plaintiffs in the Hall of History in 1947.

30.

That the fraudulent acts and schemes of Moses Hopkins and Mary Frances Sherwood-Hopkins, as heretofore alleged, were by them conceived, perpetrated, and executed with the intent and purpose to deceive, and were calculated to deceive and did deceive the Honorable Court and did defraud and deprive the legal heirs of Mark Hopkins, of their interest in and to said estate.

31.

That at the time of the rendition of the said purported decree of distribution, all claims and debts against said decedent, all taxes on said estate, and all debts, expenses and charges of administration had been fully paid and discharged.

32.

That on the 20th day of October, 1931, by petition previously filed in the Superior Court of Randolph County, State of North Carolina, and after a hearing in open court and a verdict of a jury, a

decree was entered establishing the legal heirship and next of kin of the estate of Mark Hopkins, deceased, that said decree, a copy of which marked Exhibit "E" is annexed hereto and made a part hereof, sets forth the names of those proven to be entitled to participate in the estate of said Mark Hopkins, deceased.

33.

That the plaintiffs are informed and believe and upon such information and belief allege the facts to be that each and every person whose name appears in said Exhibit "F" is a legal descendant of the brothers and sisters of Mark Hopkins; that said brothers and sisters are now dead and that the persons named in said Exhibit "F" are the next of kin and collateral heirs of the aforesaid Mark Hopkins, deceased. And are entitled to their distributive share of said estate. [18]

34.

That Alvin Chambers, one of the Plaintiffs herein, is a direct descendant of Joseph Hopkins, who was an elder brother of Mark and Moses Hopkins; that Jones Griffin, one of the Plaintiffs herein, is a direct descendant of Rebecca Hopkins Griffin, who was a sister of Mark and Moses Hopkins.

That Estelle Cothran Latta, is a direct descendant of James Hopkins, a brother of said Mark Hopkins.

35.

That the said administrator Moses Hopkins, died in the City and County of San Francisco, State of California, in the year of 1892, and since said date

the office of administrator of the estate of Mark Hopkins, deceased has been vacant.

That thereafter on the 27th day of January 1947, the heirs having discovered property unadministered, a petition for letters of administration de bonis-non upon the estate of Mark Hopkins deceased was duly filed in the Superior Court of the State of California, in and for the City of San Francisco, the court having jurisdiction of said estate, by J. T. Blount, a person duly qualified to act as such administrator, and after notice duly given as provided by law, said petition was heard by the Hon. Timothy I. Fitzpatrick, Judge of said Superior Court; and said petition for said appointment was denied on the 19th day of March 1947, and said office of administrator of said estate is now vacant, and there is no personal representative of said estate to bring this action.

Wherefor Plaintiffs pray judgment. [19]

For a second cause of action plaintiffs complain of the defendants and allege:

Plaintiffs refer to paragraph 1, to paragraph 35 inclusive of their first cause of action and by such references makes the same a part of this their second cause of action as if set forth in full herein.

36.

That on the 27th day of January, 1877, Solomon Heydenfeldt, Simon Hart, and David Goodman, conveyed to one David D. Colton, a certain tract of land situated in the Counties of Amador, San Joaquin, and Sacramento, of which said land the following is a description: The tract of land known as

and called the Rancho Arroyo Seco Rancho and containing Eleven leagues of land, more or less, and bounded and described as shown in and by the patent of the United States to Joseph Mora Moss, Horace W. Carpenter, Edward B. Beale and Herman Wohler dated the twenty-ninth day of August A. D. 1863 and recorded in the County Recorders Office of the County of Amador in Book 1 of Deeds on pages 403 and following and in the County Recorders Office of the County of Sacramento in Book No. two (2) of Patents on Page 324 and following as appears in a certain deed, a copy of which, marked Exhibit "D" is annexed hereto and made a part hereof.

Said deed, referred to above as Exhibit "D" contains the following, statement, to-wit: "And Whereas, the said David D. Colton did thereafter, viz; January 26th, 1877 execute to Leland Stanford, Charles Crocker, C. P. Huntington and Mark Hopkins (the said Stanford, Crocker, and Huntington being of the parties of the second part hereto, and the said Mark Hopkins, have since died) a certain instrument in writing of which the following is a copy viz: "This is to certify that in concluding the purchase of the Arroyo Seco Ranch of Solomon Heydenfeldt, Simon Hart, and David Goodman, I have sold four fifths ($4/5$) of the same in equal proportions as follows:

To Leland Stanford one-fifth	($1/5$)
To Charles Crocker one-fifth	($1/5$)
To Mark Hopkins one-fifth	($1/5$)
To C. P. Huntington one-fifth	($1/5$) [20]

Holding—one-fifth ($1/5$) myself, that the property being deeded to me individually I hold the same in trust for the joint account of the parties above named, with myself in equal proportion to be transferred as we may determine best.”

That said deed was recorded July 26, 1880, in Book “S” of Deeds at pages 438, etc., in the office of the County Recorder of Amador County.

That certified copies of said deed were recorded in San Joaquin and Sacramento Counties, respectively. A copy of which is hereto attached marked Exhibit “D” and reference made thereto.

37.

That Mark Hopkins, referred to in said deed marked Exhibit “D”, died intestate on or about the 29th day of March, 1878. That at the time of his death said Mark Hopkins was the owner of said undivided One-fifth ($1/5$) interest in and to the said Eleven Square leagues of land described in said deed, marked Exhibit “D”, and upon his death said interest vested in the heirs of Mark Hopkins, to-wit: Moses, James, John, Martin, Joseph, brothers of said decedent; and Annie and Prudence Russell, and Rebecca Griffin, sisters of said decedent.

38.

That on the 16th day of January 1880, a certain deed conveying the same property was executed from Ellen Colton et al. to the Ione Coal and Iron Co., conveying eleven (11) Leagues of land which deed was recorded in Book S. Page 438 in Amador County and recorded in Book V Page 591, Sacra-

mento County. Reference is made to said deed for the descriptions thereof.

That the Ione Coal and Iron Company on September 1, 1917, executed a deed to the McKissick Cattle Company for 37,231.38 more or less acres of said property being a part of the Arroyo Seco Ranch, said deed being recorded in Sacramento County in Book 473, Page 132. Reference is made to said deed for a particular description thereof.

40.

That the Ione Coal and Iron Co., on October 11, 1919, executed a deed covering said property to the McKissick Cattle Company for eleven leagues of land known as and being a part of the Arroyo Seco Ranch, said deed being recorded in Book 515 page 292, Sacramento County and thereafter the said McKissick Cattle Co., conveyed said property to Stephen E. Kieffer and said Kieffer conveyed the same to Western Investment Co.

41.

That on March 16, 1942, the Western Investment Company, executed a deed to Charles S. Howard Co., for 37,231.56 acres more or less of said property said deed is recorded in Sacramento County in Book 944 at Page 199, being a part of the Arroyo Seco Ranch conveyed by deed from Joseph Moro Moss et al. to David H. Colton, reference is made to said deed for particular description. That thereafter David Colton died and his widow Ellen Colton succeeded to his estate, that said Ellen Colton deeded said real property to the Ione Coal and Iron Company, which in turn subsequently

deeded said property to the McKissick Cattle Company, as heretofore set forth.

42.

That on September 7, 1929, The Western Investment Company executed a deed to the Western Properties Co. for 8330 acres of said land, said deed being recorded in the County of Sacramento in book 594 at page 412, the same being a part of the Arroyo Seco Ranch deed to David Colton. That David Colton died and his widow Ellen Colton succeeded to his estate, that said Ellen Colton deeded said real property to the Ione Coal and Iron Company, which in turn and subsequently deeded said property to the McKissick Cattle Company as heretofore alleged. Reference is made to said deed for a particular description thereof. That the said Western Properties Co., on the 17th day of February, 1932, amended its charter and changed the name of said Corporation to the Amador Properties Co., a corporation, and on December 27, 1932, said Amador Properties Co. was dissolved. That thereafter, J. W. Mason, H. G. Tallerday, L. N. Slater, W. G. Aldenhagen, and F. S. Howard, as trustees of said Amador Properties Co., executed a deed to the Western Investment Company, a California Corporation, transferring the said 8330 acres of land formerly held by said Western Properties Co., as heretofore alleged; and defendant Western Investment Company is now in possession of and claims to be the owner of said 8330 acres described in said deed; that the claim of said defendant Western Investment Company to one-fifth ($1/5$) thereof,

is without right, or title. That said deed to Western Investment Company is recorded in Book 673 of Deeds, at page 9, in the office of the County Recorder of Sacramento County, reference to which deed is hereby made for a particular description of the property. That said Western Investment Company holds said property as tenants in common with plaintiffs.

43.

That Mary F. Sherwood-Hopkins, Moses Hopkins and Samuel F. Hopkins joined in the deed to the Ione Coal and Iron Company of the said Eleven [22] Square Leagues of Land, as set forth in Exhibit "D". And Plaintiffs allege, that the property described in said deed is not mentioned nor referred to in the decree of distribution in the estate of Mark Hopkins deceased; that the interest of Moses Hopkins and that of Mary F. Sherwood-Hopkins, if any, she had, was not established in said decree of distribution; that Samuel Hopkins was not an heir of Mark Hopkins deceased and had no interest in said real property; that the purported transfer of said Real Property by Moses, Mary and Samuel Hopkins is neither recognized, referred to or ratified by said decree of distribution or by any order confirming said sale at all, and is null and void; that the Ione Coal & Iron Company did not by said deed acquire title to the $\frac{1}{5}$ interest of Mark Hopkins in said real property; that said property was well known by the Administrator of the estate of Mark Hopkins at the time of filing the petition for distribution; that by the recitals in said deed the

Ione Coal and Iron Company and its successor, Western Investment Co., and Charles S. Howard Co., and the Western Investment Company, defendants herein, and each of them was put on notice as to the interest of the estate of Mark Hopkins in said land, the issue of the heirs of said decedent, the provisions and defects in the decree of distribution, all as more particularly set forth in Plaintiff's first cause of action.

44.

And Plaintiffs allege that defendant, Western Investment Company is in possession of and claims to be the owner of Eight Thousand Three Hundred & Thirty (8,330) acres described in said deed: that the claim of said defendant to one-fifth ($1/5$) thereof is without right.

45.

That the said Charles S. Howard Co., is in possession of and claims to be the owner of the track containing 37,231 acres more or less described in said deed from the Western Investment Company, that the claim of said defendant to $1/5$ thereof is without right. That said property is a part of the Arroyo Seco Ranch being the same land deeded to David Colton, then to the Ione Coal and Iron Company and from said Company to the McKissick [23] Cattle Co., as heretofore alleged reference is made to said deeds for a full and particular description.

46.

That the heirs of Mark Hopkins as herein alleged are the lineal descendants, and are the owners of

One-fifth ($1/5$) intrest in and to said real estate and are tenants in common with said defendants, that plaintiffs are the lineal descendants of the heirs of Mark Hopkins as set forth in their first cause of action herein; have been and now are out of possession of said real property.

47.

That neither the plaintiffs herein nor any of the heirs of Mark Hopkins except that of Moses Hopkins had either actual or constructive notice that the possession of said co-tenant is hostile to said heirs until 1945, when they by chance discovered the deed in San Joaquin County, hereto attached, marked Exhibit "D", and by reference made a part hereof.

Wherefor plaintiffs pray judgment. [24]

For a third and separate cause of action plaintiffs complain of defendants and allege:

Plaintiffs refer to paragraph 1, to 35 inclusive of their first cause of action and by such reference makes the same a part of this their third cause of action as if set forth in full herein.

48.

That on the 29th day of March, 1878, the time of his death, and for sometime prior thereto, the said Mark Hopkins owned a $1/2$ interest and was in possession of certain pieces and parcels of land situate in the County of Sacramento, State of California, and more particularly described as follows, to-wit:

The North $1/2$ of lot No. 8 in block bounded by U. & V., fourth and fifth streets.

Now in possession of William and Vera Penix.

The west $\frac{1}{2}$ of the East half of lot No. 3, in block bounded by K. and L., Second and Third Streets, and

The East $\frac{1}{4}$ of lot No. 3 in block bounded by K. and L. Second and Third Streets, and

The North half of the west half lot number 4, in block bounded by K. and L., Second and Third Streets. Now in the possession of Walter Fong.

The East half of the west $\frac{3}{4}$ of lot number 6, in block bounded by K. and L., Second and Third Streets, and

The West thirty feet of lot number six in block bounded by K. and L., Second and Third Streets, and

The East half of the West half and the West half of the East half of lot number seven in block bounded by K. and L., Second and Third Streets, now in the possession of Claude A. and Vera G. Beagle.

That part of the west half of the East half of lot number four in block bounded by K. and L., Second and Third Streets now in the possession of Fred Bardoni. [25]

That upon the death of Mark Hopkins—the brothers and sisters of said decedent—succeeded to said real property as tenants in common.

49.

That soon after the death of said Mark Hopkins and while his estate was still in probate, Mary Frances Sherwood-Hopkins, the then appointed and acting administratrix of said estate, executed individually, together with Moses Hopkins and Samuel

Hopkins a deed to said real estate to Collis P. Huntington, et al., which said deed appears of record in volume 97 of deeds at page 91 in the office of the County Recorder of Sacramento County, State of California, a copy of said deed marked Exhibit "C" is attached hereto and made a part hereof. That by said deed, the said Mary Frances Sherwood-Hopkins, administratrix and said Moses and Samuel Hopkins, purported to grant, release and convey to Collis P. Huntington et al., all the right, title and interest, that the said Mark Hopkins, deceased, had at the time of his death, and all that his or the parties of the first part have since acquired by operation of law or otherwise in and to the real and personal property of said deceased and assets of the firm of Huntington Hopkins Company, that said deed was made without an order of the Court, and the attempted transfer has never been confirmed by the Court, or the assets therefrom accounted for in the purported decree.

50.

That by means of said deed said Mary Frances Sherwood-Hopkins, said administratrix, and the other grantors therein named, purported to transfer said real and personal property belonging to said estate of Mark Hopkins deceased and to the heirs of the said decedent the brothers and sisters of the said Mark Hopkins, to-wit: Moses, James, John, Martin, and Joseph Hopkins, Annie and Prudence Russell and Rebecca Griffin. That said deed was and is null and void except as to the $\frac{1}{8}$ interest in said property therein described owned by

Moses Hopkins. That plaintiffs herein are the owners as tenants in common of $\frac{7}{8}$ of the one-half interest owned by the said Mark Hopkins in the real and personal property of the partnership of Huntington [26] & Hopkins as shown and described in the deed hereto attached marked Exhibit "C".

51.

That said Mark Hopkins at the time of his death was the sole owner and in possession of certain lots and parcels of land situated in the County of Sacramento, State of California, and more particularly described as follows, to-wit: The North half of the West half of Lot No. 4 K & L 5 & 6 Streets, and the West 19 feet and seven inches of Lot 4, now in the possession of Joseph & Matilla De Vincenzi and Roger L. and Marie Bondi. Lot Number (4) K & L 4 & 6 Streets, and the West half of Lot No. 4, is now in the possession of Verne and Vera Lewis.

The East half of Lot No. 4, is now in the possession of Jennie T. Stoll. The West half of Lot Three M & N 5 & 6 Streets, is now in the possession of Fred Fond and Grace Lee. The East half of Lot No. 3, is now in the possession of Confucius Church of Sacramento.

Lot No. 4 M & N 5 & 6 Streets, is now in the possession of the following named defendants: The N-W half Gertrude Kahn. The North half of East half in Jean Lillard. The North 27 feet of South half, in Fong Tueng Quong. The North 27 feet of the South 53 feet, in Fong May Ngo. The South 26 feet, in Vincent Ameda Lambra.

Lot No. 2 M & N 4 & 5 Streets, and the West one half of Lot No. 3 M & N 4 & 5 Streets, is now in the possession of Ira Jones.

The South 75 feet of Lot 5 L & M 5 and 6 Streets, is now in the possession of the Sacramento Investment Co.

The West 32 feet of Lot No. 2 M & N 19th & 20th Streets, and the North half of East half of Lot No. 1 M & N 19th & 20th Streets is now in the possession of John V. Noonan.

The North one fourth of Lot No. 5 M & N 5 & 6 Streets is now in the possession of Drusilla N. Peig.

The West half of Lot No. 2 K & L 4 & 5 Streets is now in the possession of Louis H. Mark. [27]

52.

That upon the death of said Mark Hopkins said brothers and sisters of said decedent succeeded to said real property as tenants in common thereof.

That plaintiffs herein are the owners as tenants in common of a seven-eighths, (7/8) interest in and to said real property above described. That in the probate proceedings had upon the estate of said Mark Hopkins deceased, said Mary Frances Sherwood-Hopkins and Moses Hopkins suppressed and concealed said property, and in the purported decree of distribution of said estate, no reference is made to nor is there any record of said real or per-

sonal property herein referred to nor to said deed herein above set forth, although the existence of said property was at all times herein mentioned, well known to said Moses Hopkins and Mary Sherwood-Hopkins.

That defendants as heretofore designated as being in the possession of said property own one-eighth, ($1/8$), interest in said property and hold a seven-eighths, ($7/8$), interest therein as tenants in common with Plaintiffs.

That defendants as heretofore set out and each of them claims to own the whole thereof, that the Claim of said defendants and each of them to $7/8$ thereof is without right.

Wherefor, Plaintiffs pray judgment. [28]
For a fourth and separate cause of action plaintiffs complain of defendants and allege:

Plaintiffs refer to and adopt paragraphs 1, to 35 inclusive of their first cause of action and by such reference make the same a part of this their fourth cause of action as though set forth herein in full.

53.

That defendant Southern Pacific Railroad Company is a Corporation duly created and existing under and by virtue of the laws of the State of Kentucky; that said Corporation has its principal place of business in the City of San Francisco, State of California and has complied with the laws of the State of California relating and pertaining to a foreign Corporation doing business in the State of California.

54.

That said defendant Railroad Corporation is now and was operating and doing business in the State of California in the year 1878.

55.

That Mark Hopkins, said decedent, was one of the incorporators of said defendant Railroad Corporation; that plaintiffs are informed and believe and upon such information and belief allege the facts to be that said Mark Hopkins at the time of his death owned one fourth ($\frac{1}{4}$), of the capital stock of said Corporation together with certain bonds, the exact number and amount of which are unknown to Plaintiffs.

56.

That upon the death of said Mark Hopkins the following brothers and sisters of said decedent, to-wit: Moses, James, John, Martin, Joseph Hopkins, Annie, and Prudence, Russell, and Rebecca Griffin succeeded to said stocks and bonds, subject to administration of the estate of Mark Hopkins, deceased. [29]

57.

That by reason of the premises the plaintiffs herein, direct descendants of above named brothers and sisters of Mark Hopkins, except Moses Hopkins, are the owners of and entitled to the possession of a seven-eighths, ($\frac{7}{8}$), interest in and to said stocks and bonds.

58.

That neither the plaintiffs nor any of their said ancestors have received either by transfer or decree

of Court or otherwise any of said stocks and bonds.
59.

And plaintiffs allege that defendant's Corporation holds the said seven-eighths, (7/8), interest of plaintiffs in said stocks and bonds in trust for plaintiffs, as tenants in common.

Plaintiffs further allege that if said defendant Corporation has transferred upon its books any of said stocks and bonds or assigned the interest of plaintiffs in and to said stocks and bonds or liquidated said stocks and bonds such transfer, assignment or liquidation of said stocks, bonds, or other interests of plaintiffs was without authority of said heirs, or any Court of Law and in violation of the legal rights of said plaintiffs.

60.

That prior to and at the time of the death of Mark Hopkins, said defendant Southern Pacific Railway Company was the owner of many branch lines of Railroad known as Southern Pacific Railroad Company, Corporation, San Francisco San Jose Railroad Company, Santa Clara and Pajaro Valley Railroad Company, The California Southern Railroad, The Southern Pacific Branch Railroad Company, The Los Angeles and San Pedro Railroad Company, The San Pablo and Tulare Railroad Company, the Stockton and Visalia Railroad Company, The Stockton Copperopolis Railroad Company, The Los Angeles and San Diego Railroad Company, The Los Angeles and Independence Railroad Company, The Northern Railway Company, The Vaca Valley and Clear

Lake Railroad Company, The Sacramento [30] Valley Railroad Company, The Folsom and Placerville Railroad Company, The Sacramento and Placerville Railroad Company, The Amador Branch Railroad Company, The Berkeley Branch Railroad Company, The San Francisco Marysville Railroad Company, The Sacramento and San Francisco Railroad Company, The California Pacific Railroad Company, and the California Pacific Railroad Extension Company, which said branch roads were consolidated with Southern Pacific Railroad Company. That said Mark Hopkins, deceased, was at the time of his death the owner of stocks and bonds of said Railroad Companies merged with defendant Southern Pacific Company the amount of which is unknown to plaintiff.

61.

That the stocks and bonds in said Railroad Companies owned by Mark Hopkins as herein above set forth, except such as are designated in Paragraph 19 Sub. Sec. F of the first cause of action, were not designated in nor included in the decree of distribution of the estate of Mark Hopkins hereinbefore referred to, to-wit in Paragraph 19 of the first Cause of Action of Plaintiffs Complaint.

Wherefore, Plaintiffs pray judgment. [31]
For a fifth and separate cause of action plaintiffs complain of defendants and allege:

62.

Plaintiffs refer to paragraphs 1, to 35 inclusive of their first cause of action and by such reference

make the same a part of this their fifth cause of action as though set forth in full herein.

63.

That defendant Central Pacific Railroad Company, at all times herein mentioned was and now is operating and maintaining railroads in the State of California under and by virtue of the laws of said State and Plaintiffs are informed and believe and upon such information and belief allege that said Central Pacific Railroad Company has been and is now merged with defendant, Southern Pacific Railroad Company.

64.

That Mark Hopkins, deceased, was one of the incorporators of said defendant Central Pacific Railroad Company and at the time of his death, Plaintiffs are informed and believe and allege on information and belief owned one-fourth, ($\frac{1}{4}$) of the capital stock of said Central Pacific Railroad Company together with bonds of said corporation, the exact amount of which is now unknown to plaintiffs.

65.

That upon the death of said Mark Hopkins the following brothers and sisters, to-wit: Moses, James, John, Martin, and Joseph Hopkins, Annie and Prudence Russell and Rebecca Griffin succeeded to said stocks and bonds as tenants in common.

66.

That by reason of the premises the plaintiffs herein, direct descendants of above named brothers and sisters of Mark Hopkins, except Moses Hop-

kins, are the owners of and entitled to the possession of a seven-eighths, ($7/8$), interest in and to said $1/4$ of said stocks and bonds. [32]

67.

That neither the plaintiffs nor any of their said ancestors have received either by transfer or decree of Court or otherwise any of said stocks and bonds.

68.

Plaintiffs allege that said defendant, Central Pacific Railroad Company and Southern Pacific Railroad Company, Corporation holds the seven-eighths, ($7/8$) interest of plaintiffs in said stocks and bonds in trust for plaintiffs.

69.

Plaintiffs further allege that if said defendant Corporation has transferred upon its books any of said stocks and bonds, or entered thereon any assignment of the interest of plaintiffs in and to said stocks and bonds, or liquidated any stocks and bonds, such transfer, assignment, or liquidation of said stocks, bonds, or other interests of plaintiffs, was without authority of said heirs or of a Court of Law and in violation of the legal rights of said plaintiffs and their ancestors.

70.

That prior to the death of Mark Hopkins, said defendant Railway Company was the owner of several branch lines of railroad known as: The California and Oregon Railroad Company, The San Francisco Oakland and Alameda Railroad Company, the San Joaquin Valley Railroad Company, which said branch roads were consolidated with the Central Pacific Railroads Company. That said

Mark Hopkins, deceased, was at the time of his death the owner of stocks and bonds of said railroad companies merged with defendant Central Pacific Railroad Company.

71.

That the stocks and bonds in said Railroad Companies owned by Mark Hopkins as herein above set forth, except such as are designated in paragraph 19, Sub. Section "F" of the first cause of action of this Complaint, were not designated in nor included in the purported decree of distribution of the estate of Mark Hopkins herein before referred to, to-wit [33] in paragraph 19 of the first cause of Action of Plaintiffs Complaint.

Wherefore plaintiffs pray for a declaratory judgment of this court, declaring and adjudging as follows:

A. That the plaintiffs herein and the persons similarly situated whose names are set forth in exhibit "F" annexed to this complaint and made a part hereof, are the heirs of Mark Hopkins deceased.

B. That the purported decree of distribution in the estate of Mark Hopkins, deceased, herein set out in full, made on the first day of November 1883, was obtained by extrinsic fraud practiced upon the Court and the heirs of Mark Hopkins, deceased, and for the reasons set forth in paragraph 19 of plaintiffs First Cause of Action, and that said decree of distribution is null and void.

C. That the property described in plaintiffs' complaint and not mentioned or described in said purported decree of distribution was at all times

during said administration of said estate of Mark Hopkins, and at the time of the rendition of said decree of distribution known to said administrator, and that the title to said property so known to said administrator Moses Hopkins and not described in said purported final account and decree of distribution did not pass to the distributees named in said purported decree of distribution, but remained a part of the estate of Mark Hopkins undistributed.

D. If this court should find that the said decree of distribution was and is valid and in full force and effect, then that this Court find and declare that the title to the property herein described, known to said administrator at the time of the making of said decree of distribution, but not set forth, mentioned or described therein, did not pass to the distributees named Moses Hopkins and Mary Frances Sherwood-Hopkins, or to either of them, by reason of that part of said decree purporting to distribute to said Moses Hopkins and Mary Frances Sherwood-Hopkins, "all property not now known or hereafter discovered."

E. That the Court declare and decree that the title to the property known to said administrator Moses Hopkins at the time of the entering of said [34] decree of distribution was vested $7/8$ or such interest as the record may disclose in the plaintiffs the heirs of Mark Hopkins, deceased, subject to administration.

F. That the court direct the Superior Court of the State of California in and for the City and County of San Francisco, sitting in probate, to ap-

point an administrator, de bonis non, and to distribute the said property herein described and any other property hereinafter discovered, pursuant to the findings and judgment of this Court, to the persons determined by this Court to be the heirs of Mark Hopkins deceased.

G. For such other relief as the Court may deem meet and equitable in the premises.

H. And for the cost.

/s/ BUSICK & BUSICK,
/s/ CHARLES H. SECOMBE,
/s/ S. J. BENNETT,
/s/ WALTER H. SILER,
/s/ CARLYLE HIGGINS,

Attorneys for the Plaintiffs.

State of North Carolina,
County of Durham—ss.

Estelle Latta, being first duly sworn deposes and says: That she is one of the plaintiffs in the above entitled action: That she has read the foregoing Bill of Complaint and knows the contents thereof: and that the same is true except only as to the matters therein stated upon information and belief and that as to those matters she believes it to be true.

ESTELLE LATTA.

Subscribed and sworn to before me this 26th day of March, 1947.

(Seal)

JAS. R. STONE,

Asst. Clerk of the Superior Court of Durham
County, State of North Carolina. [35]

[Endorsed]: Filed July 27, 1945, H. A. van der Zee, Clerk. J. V. F. Farley, Deputy Clerk.

EXHIBIT "A"

In the Superior Court of the City and County of
San Francisco, State of California
Department No. 9

In the Matter of the Estate of Mark Hopkins,
Deceased.

DECREE OF DISTRIBUTION

Moses Hopkins Administrator of the Estate of Mark Hopkins, deceased having on the sixteenth day of March A. D. 1883, rendered and filed herein a full account and report of his administration of said estate, which account was for a final settlement, and having with said account filed a petition for the final distribution of said Estate.

And said account and petition this day coming on regularly to be heard, proof having been made to the satisfaction of the Court that the Clerk had given notice of the settlement of said account and the hearing of said petition in the manner and for the time heretofore ordered and directed by this Court.

And Mrs. Mary Frances Sherwood-Hopkins the only person interested in said Estate except said Administrator, having filed her consent in writing that said account may be settled and allowed.

And it appearing by the testimony of said Administrator and the vouchers by him submitted that said account is in all respects true and correct and that it is supported by proper vouchers; that the residue of money in the hands of the Administrator

at the time of filing said account was Eight Hundred and Ninety-five Thousand and Seventy-eight dollars and one cent, (\$895,078.01) that since the rendition of said account there has been received by the said Administrator the sum of Eight Hundred and Sixteen dollars (\$816); that the sum of Seventy-two Hundred and Eighty-six dollars has been extended by him as necessary expenses of administration, the [37] vouchers whereof, together with a statement of such receipts and disbursements are now presented and filed and said statement is now settled and allowed and the payments are approved by this Court, and it appearing that all claims and debts against said decedent, all taxes on said Estate and all debts, expenses and charges of administration have been fully paid and discharged and that said estate is ready for distribution and in condition to be closed.

And it appearing to the Court that the said parties in interest, to-wit, Mary Frances Sherwood Hopkins and said Moses Hopkins have agreed in writing that the commissions and fees of administration of said estate shall be fixed at the sum of Three Hundred Thousand Dollars; and that the same shall be apportioned as follows: to Mary Frances Sherwood Hopkins formerly Administratrix of said estate the sum of Two Hundred and Twenty-five Thousand dollars, (\$225,000) and to Moses Hopkins the sum of Seventy-five Thousand dollars (\$75,000) and that the said Moses Hopkins Administrator as aforesaid pay the said Mary Frances Sherwood Hopkins said sum of Two Hundred and Twenty-five Thousand dollars (\$225,000) as her

commissions as administratrix of said Estate and to himself the said sum of Seventy-five Thousand Thousand dollars (\$75,000) as his commissions out of the moneys in his hands whereof distribution is hereby ordered.

It is further ordered adjudged and decreed that the said final accounts of the said Administrator be and the same are settled, allowed and approved and that the residue of said Estate hereinafter particularly described and any other property not now known or discovered which may belong to said Estate or in which said Estate may have any interest, be and the same is hereby distributed as follows:

Three fourths of said Estate to be distributed to the widow of said deceased, Mary Frances Sherwood Hopkins, and one fourth of said Estate to be distributed to the brother of said deceased, Moses Hopkins.

The following is a particular description of the said residue of said Estate referred to in this decree and of which distribution is now ordered as aforesaid. \$895,078.01 in gold coin of the United States, cash in the hands of said Administrator, 586 $\frac{1}{4}$ shares [38] of the capital stock of the Copperopolis Railroad Company, 350 shares of the Capital Stock of the Los Angeles and San Diego Railroad Company, 750 shares of the capital stock of the Potrero and Bay View Railroad Company, 10,000 shares of the Capital Stock of the Occidental and Oriental Steamship Company, 750 shares of the Capital Stock of the California Pacific Railroad Company,

102 shares of the Capital Stock of the Rocky Mountain Coal and Iron Company, 1388 $\frac{8}{9}$ shares of The Western Development Company, $\frac{1}{4}$ of 393 Bonds of the Sacramento Valley Railroad Company, 1 share of the Capital Stock of the Orleans Hill Vinticultural Association.

And it further appearing to this Court that the parties interested in said Estate on the Fourth day of September, A. D. 1879, to-wit Mary Francis Sherwood Hopkins, Moses Hopkins, and Samuel F. Hopkins, whose interest in said Estate has since been acquired by Moses Hopkins, did on said day enter into an agreement, in writing wherein it was agreed among other things that upon the final settlement of said Estate the Court having jurisdiction thereof shall and may by its final decree distribute the entire amount of the real estate belonging to said Estate to said Mary Frances Sherwood Hopkins.

And it further appearing to this Court, that the said Moses Hopkins and the said Samuel F. Hopkins, did on the thirteenth day of March, A. D. 1880, by deed duly made, executed and delivered convey to Mary Frances Sherwood Hopkins all their right title and interest in and to all the real estate of which the said Mark Hopkins died seized and possessed, situated lying and being within the State of California. It is further ordered adjudged and decreed that the entire amount of said real estate of which the said Mark Hopkins died seized and possessed, and in which the said estate has any right title or interest, be and the same is hereby set aside

and distributed to Mary Francis Sherwood Hopkins, widow of said deceased and the said conveyance from Moses Hopkins and Samuel F. Hopkins to Mary Francis Sherwood Hopkins is hereby approved and confirmed. Done in open Court this the first day of November, A. D. 1883. etc.

J. V. COFFEY,

Judge. [39]

The annexed instrument is a correct copy of the original on file in my office.

Attest: Certified July 9, 1946.

H. A. VAN DER ZEE,

County Clerk of San Francisco, and Ex-officio Clerk of the Superior Court of the State of California, in and for the City and County of San Francisco.

By LUTHER DOBSON,

Deputy. [40]

PLAINTIFFS' EXHIBIT "B"

This indenture, made the Thirteenth day of March in the year of our Lord One Thousand Eight Hundred and Eighty between Samuel F. Hopkins and Moses Hopkins heirs at law of Mark Hopkins deceased parties of the first part and Mary Frances Hopkins of the City and County of San Francisco State of California the party of the second part Witnesseth: that the said parties of the first part for and in consideration of the sum of One Dollar lawful money of the United States of

America to them in hand paid by the said party of the second part the receipt whereof is hereby acknowledged do by these presents grant bargain sell convey unto the said party of the second part and to her heirs and assigns forever all of their right title and interest to and in all real estate of which the said Mark Hopkins died seized and possessed situated lying and being within the State of California, the interest of each of said parties of the first part in said real estate being one undivided eighth part which they hereby severally convey to the said party of the second part together with all and singular the tenements hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions remainder and remainders rents issues and profits thereof.

To have and to hold all and singular the said premises together with the appurtenances unto the said party of the second part her heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written Signed Sealed and Delivered.

SAM'L F. HOPKINS (Seal)

in the Presence of

MOSES HOPKINS (Seal)

The foregoing instrument was properly acknowledged and recorded in the County of San Mateo, State of California in book 32, dates on back 525.

State of California

County of San Mateo—ss.

I, T. C. Rice, County Recorder in and for the [41] County of San Mateo, State of California, do hereby certify the annexed to be a full, true and correct copy of the record of Deed Samuel F. Hopkins et al to Mary Frances Sherwood Hopkins as the same appears of record in Vol. 23 of deeds at page 525, records of said County.

In Witness Whereof, I have hereunto set my hand and seal of office this 27th day of July A. D. 1944.

G. C. RICE,

County Recorder.

By RUTH KIRSTE,

Deputy Recorder. [42]

EXHIBIT "C"

Mary Frances Sherwood Hopkins et als to Collis P. Huntington et als

This indenture made this fifth day of April A. D. 1879 between Mary Frances Sherwood Hopkins of the City and County of San Francisco, State of California.

Samuel F. Hopkins of St. Clair, Michigan and Moses Hopkins of Sutter County, California being respectively the widow and brother of Mark Hopkins deceased and constituting the only heirs of said deceased parties of the first part and Collis P. Huntington of the City and State of New York, Charles Miller of the City and County of San Fran-

cisco, State of California, Albert Gallatin and W. R. S. Foye of the City of Sacramento, County of Sacramento, State of California composing the present firm of Huntington, Hopkins & Co., parties of the second part.

Whereas the late firm of Huntington, Hopkins & Co. composed of the parties of the second part and the said late Mark Hopkins was dissolved by the death of said Mark Hopkins leaving the parties of the second part the surviving partners thereof.

And, Whereas by Articles of Co-partnership dated March 30th, 1878, a new firm has been organized under the same name but composed of the parties of the second part.

And, Whereas for proper consideration it had been agreed that all the interest of said Mark Hopkins deceased in the business property and assets of said late firm of Huntington, Hopkins & Co. should be transferred to and vested in the parties of the second part as composing the present firm of Huntington Hopkins & Co.

Now, This Indenture Witnesseth that the parties of the first part in consideration of the premises and of the sum of One Dollar to them in hand by the parties of the second part the receipt of which is hereby acknowledged have granted released and conveyed and by these presents do grant release and convey to the parties of the second part [43] their heirs and assigns in the shares and proportions in which they are respectively interested in and owners of the business property and assets of said present firm of Huntington Hopkins & Co. as specified in

their said Articles of Co-partnership dated March 30th 1878 all the Estate right title and interest that the said Mark Hopkins deceased had at the time of his death and all that his Estate or the parties of the first part as his heirs at law have since acquired by operation of law or otherwise of in or to the following described Real Estate to-wit: All that certain Real Estate situate in the City and County of San Francisco State of California and described as follows to-wit: Commencing at a point in the Northerly line of Bush Street distant thereon One Hundred and two feet six inches ($102\frac{6}{12}$) Easterly from the corner formed by the intersection of said line of Bush with the Easterly line of Battery Street running thence Easterly along said line of Bush Street forty five (45) feet thence at right angles Northerly Ninety-one feet eight inches ($91\frac{8}{12}$); thence at right angles Westerly Forty five (45) feet and thence at right angles Southerly Ninety-one feet eight inches ($91\frac{8}{12}$) to the commencement being portion of Beach and Water Lots Numbers Two Hundred and Sixty-five (265) Two Hundred Sixty-six (266) Two Hundred Seventy-five (275) and Two Hundred Seventy-six (276); Also all that Real Estate situate in said City and County of San Francisco described as follows to-wit: Commencing at a point in the Northeasterly line of First Street distant thereon One Hundred and Thirty-seven feet six inches ($137\frac{6}{12}$) Southeasterly from the point of intersection thereof with the Southeasterly line of Market Street thence running Southeasterly along said line of First Street

Ninety-one feet eight inches ($91 \frac{8}{12}$) thence at right angles Northeasterly One Hundred and Thirty-seven feet and six inches ($137 \frac{6}{12}$) thence at right angles Northwesterly Ninety-one feet eight inches ($91 \frac{8}{12}$) and thence at right angles Southwesterly One Hundred and Thirty-seven feet six inches ($137 \frac{6}{12}$) to the point of commencement being Beach and Water Lots number Two Hundred and Ninety six (296) and Two Hundred and Ninety seven (297) as numbered and delineated on the original Beach and Water Lot survey of said City of San Francisco also all that certain Real Estate situate in the City of Sacramento County of Sacramento State of California described as follows to wit: [44] The North one half ($\frac{1}{2}$) of Lot Eight (8) in the block bounded by "M & L" Fourth and Fifth Streets also the West one half ($\frac{1}{2}$) of the East one half ($\frac{1}{2}$) of Lot Three (3) in the block bounded by "K & L" Second and Third Streets also the East one quarter ($\frac{1}{4}$) of Lot Three (3) in block bounded by "K & L" Second and Third Streets also East one half ($\frac{1}{2}$) of the West three quarters ($\frac{3}{4}$) of Lot Six (6) in block bounded by "K & L" and Second and Third Streets: Also the West Thirty (30) of Lot Number Six (6) in block bounded by "K & L" Second and Third Streets; Also the East one half ($\frac{1}{2}$) of the West one half ($\frac{1}{2}$) and the West one half ($\frac{1}{2}$) of the East one half ($\frac{1}{2}$) of Lot Number Seven (7) in the block bounded by "K & L" Second and Third Streets; also the North one half ($\frac{1}{2}$) of the West one-half ($\frac{1}{2}$) of Lot

Number Four (4) in the block bounded by "K & L" Second and Third Streets; also that part of the West one half ($1\frac{1}{2}$) of the East ($1\frac{1}{2}$) of Lot Four (4) in the block bounded by "K & L" and Second and Third Streets described as follows: Beginning Thirty-nine (39) feet and eight (8) inches from the Northeast corner of said Lot Number Four (4) thence running West along the North line of said Lot Four (4) inches, thence North Eighty (80) feet to the place of beginning as shown and designated upon the official map or plan of said City of Sacramento; also all of the rest residue and remainder yet to come and unexpired of the Leasehold interest and term created by the lease executed by Lorenzo Silgreaves to the said Collis P. Huntington and others composing the said late firm of Huntington Hopkins & Co. (which lease bears date December 3rd 1877 and is recorded in the office of the County Recorder of the said City and County of San Francisco Liber 67 of Leases at page 154) of in and to that parcel of land situate in the said City of San Francisco and described as follows, to-wit: Commencing at a point in Northerly line of Bush Street distant One Hundred and Forty-seven feet and six inches ($147\frac{6}{12}$) from the Easterly line of Battery Street running thence Northerly parallel to Battery Street Ninety-one feet and eight inches ($91\frac{8}{12}$) thence at right angles Easterly Forty-seven feet and six inches ($47\frac{6}{12}$), thence at right angles Southerly to the Northwesterly line of Market Street, thence Southwesterly along said Northwesterly line of Market Street Seven feet and

six inches (7 6/12) to the Northerly line of Bush Street, and [45]

To Have and to Hold unto the said party of the third part, its successors and assigns forever.

In Witness Whereof the parties of the second part have hereunto set their hands and seals in evidence of their request to the party of the first part to execute this instrument, and for the purpose of uniting with her in the execution thereof, and the party of the first part in accordance with said request has hereunto set her hand and seal, the day and year first herein above written.

Signed Sealed and delivered by M. F. S. Hopkins and Samuel F. Hopkins in the presence of E. W. Hopkins.

Signed, sealed and delivered by Ellen M. Colton in presence of David Cook.

State of California,

City and County of San Francisco—ss.

Filed and recorded at the request of W. F. & Co.'s Agent July 26th 1880 at 10 min. past 8 o'clock, in Book "S" of Deeds, pages 438, etc., Records of Amador County.

L. J. FOUTENROSE.

County Recorder.

Recorded at the request of Wells Fargo & Co., August 5th, 1880 at 58 min. past 9 o'clock A. M.

EXHIBIT "D"

This Indenture made and entered into at the City and County of San Francisco, State of California this Sixteen (16th) day of January A. D. 1880 between Ellen M. Colton, party of the first part, Leland Stanford, Charles Crocker, C. P. Huntington, Mary F. S. Hopkins, Moses Hopkins and Samuel F. Hopkins, parties of the second part, and "Ione Coal and Iron Company," a corporation organized and existing under and by virtue of the laws of the State of California, and having its office and principal place of business at the City and County of San Francisco, party of the third part, Witnesseth:

Whereas, heretofore, viz: at the City and County of San Francisco on the 23rd day of January A. D. 1877 David D. Colton purchased from Solomon Haydenfeldt, Simon Hart, and David Goodman and received from them a conveyance of a certain tract of land, of which the following is a description, viz:

The tract of land known as and called the Rancho Arroyo Seco and containing Eleven leagues of land, more or less, and bounded and described as shown in and by the patent of the United States to Joseph Mora Moss, Horace W. Carpentier, Edward F. Beale and Herman Wohler dated the twenty ninth day of August A. D. 1863 and recorded in the County Records Office of the County of Amador in Book I of Deeds on pages 403 and following and in the County Records Office of the County of Sacramento in Book Number Two (2) of Patents on pages 324 and following, said land being situated

in the Counties of Amador, San Joaquin, and Sacramento, in the State of California,

And Whereas, the said David D. Colton did thereafter, viz: January 26th 1877 execute to Leland Stanford, Charles Crocker, C. P. Huntington and Mark Hopkins (the said Stanford, Crocker and Huntington being of the parties of the second part hereto, and the said Mark Hopkins, having since died) a certain instrument in writing of which the following is a copy viz:

“This is to certify that in concluding the purchase of the Arroyo Seco Ranch of Solomon Heydenfeldt, Simon Hart, and David Goodman, I have sold [47] four fifths ($\frac{4}{5}$) of the same in equal proportions as follows:

To Leland Stanford one-fifth ($\frac{1}{5}$)

To Charles Crocker one-fifth ($\frac{1}{5}$)

To Mark Hopkins one-fifth ($\frac{1}{5}$)

To C. P. Huntington one-fifth ($\frac{1}{5}$)

Holding—one fifth ($\frac{1}{5}$) myself. That the property being deeded to me individually I hold the same in trust for the joint account of the parties above named, with myself in equal proportion to be transferred as we may determine best:

All the other papers and stock pertaining to the property I have given into the hands of the Western Development Company for safe keeping, except the map, which has been with Mr. Montague, from which he is to make a new one for our future use.

DAVID D. COLTON”

San Francisco—January 26th, 1877.

And Whereas, the said Mark Hopkins has since died and the aforesaid Mary F. S. Hopkins, Moses Hopkins and Samuel F. Hopkins are his heirs at law and have succeeded to all of his estate and rights: And whereas, the said David D. Colton has since died and left all of his estate by his last will and testament to the said Ellen M. Colton, the party of the first part hereto:

And Whereas, the said parties of the second part have requested the said party of the first part to unite with them in a conveyance of the said tract of land to the party of the third part hereto, and to convey the said tract of land, to the said party of the third part:

Now Therefore, this Indenture Witnesseth, that in consideration of the premises aforesaid, the said party of the first part and the said parties of the second part, have sold, conveyed and transferred and do by these presents sell, assign and transfer, unto the said party of the third part, its successors and assigns, all of their right, title and interest in and to the said tract of land, with its appurtenances and improvements of whatever nature. [48]

To Have and to Hold unto the said party of the third part, its successors and assigns forever.

In Witness Whereof the parties of the second part have hereunto set their hands and seals in evidence of their request to the party of the first part to execute this instrument, and for the purpose of uniting with her in the execution thereof, and the party of the first part in accordance with

said request has hereunto set her hand and seal, the day and year first herein above written.

Signed Sealed and delivered by M. F. S. Hopkins and Samuel F. Hopkins in the presence of E. W. Hopkins.

Signed, sealed and delivered by Ellen M. Colton in presence of David Cook.

(Seal) LELAND STANFORD

(Seal) CHAS. CROCKER

(Seal) C. F. HUNTINGTON

(Seal) By E. H. MILLER,

His atty in fact.

(Seal) M. F. S. HOPKINS

(Seal) MOSES HOPKINS

(Seal) SAML. F. HOPKINS

(Seal) ELLEN M. COLTON

State of California,

City and County of San Francisco—ss.

On the Sixteenth (16th) day of January in the year One Thousand Eight Hundred and Eighty (1880) before me Charles J. Torbert, a Notary Public in and for the said City and County of San Francisco, State of California, duly commissioned and qualified, personally appeared Leland Stanford and Charles Crocker known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal this 16th day of January A. D. 1880.

(Seal) CHARLES J. TORBERT,

Notary Public in and for the City and County of San Francisco, State of California. [49]

State of California

City and County of San Francisco—ss.

On this Sixteenth (16th) day of January in the year One Thousand Eight Hundred and Eighty (1880) before me Charles J. Torbert, a Notary Public in and for the said City and County of San Francisco, State of California, duly commissioned and qualified, personally appeared E. H. Miller, Jr., known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of C. P. Huntington and acknowledged to me that he subscribed the name of C. P. Huntington thereto as principal and his own name as attorney in fact.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal this 16th day of January A. D. 1880.

(Seal) CHARLES J. TORBERT,
Notary Public in and for the City and County of
San Francisco, State of California.

State of California,

City and County of San Francisco—ss.

On this Sixteenth (16th) day of January in the year of our Lord One Thousand Eight Hundred and Eighty (1880) before me, Charles J. Torbert, a Notary Public in and for the said City and County of San Francisco, duly commissioned and qualified, personally appeared E. W. Hopkins, personally

known to me to be the same person whose name is subscribed to the within instrument, as a witness thereto, who, being by me duly sworn, deposed and said, that he resides in the City and County of San Francisco, State of California, that he was present and saw M. F. S. Hopkins (a widow) and Samuel F. Hopkins, personally known to him to be the same persons described in and who executed the said within instrument, as parties thereto, sign, seal and deliver the same; and that the said M. F. S. Hopkins and Samuel F. Hopkins acknowledged in the presence of said affiant that they executed the same, and that he, the said affiant thereupon subscribed his name thereto as a witness. [50]

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal this 16th day of January A. D. 1880.

(Seal) CHARLES J. TORBERT,
Notary Public in and for the City and County of
San Francisco, State of California.

State of California,
City and County of San Francisco—ss.

On this Twenty-fourth (24th) day of January in the year One Thousand Eight Hundred and Eighty (1880), before me, Charles J. Torbert a Notary Public in and for the said City and County of San Francisco, State of California, duly commissioned and qualified personally appeared Moses Hopkins, known to me to be the person whose name is sub-

scribed to the within instrument and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal this 24th day of January A. D. 1880.

(Seal) CHARLES J. TORBERT,
Notary Public in and for the City and County of
San Francisco, State of California.

State of California,
City and County of San Francisco—ss.

On this Twenty-third day of July A. D. One Thousand Eight Hundred and Eighty (1880) before me, Holland Smith, a Notary Public in and for said City and County, residing therein, duly commissioned and sworn, personally appeared Daniel Cook, personally known to me to be the same person whose name is subscribed to the annexed instrument as a witness thereto who being by me duly sworn, deposes and says, that he resides in the City and County of San Francisco, that he was present and saw Ellen M. Colton, known to him to be the same person, described in, whose name is subscribed to, and who executed the annexed instrument as party thereto, sign, seal and deliver the same; and that the said Ellen M. Colton acknowledged in the presence of deponent, that she executed the same freely and [51] voluntarily; and for the uses and purpose therein mentioned, and that he, the deponent, thereupon signed his name as a subscribing witness thereto.

In Witness Whereof, I have hereunto set my

hand and affixed my Official Seal, at my office in the City and County of San Francisco, the day and year last above written.

(Seal) HOLLAND SMITH,
Notary Public, 307 Montgomery Street.

Filed and recorded at the request of W. F. & Co.'s Agent July 26th 1880 at 10 min. past 8 o'clock A. M., in Book "S" of Deeds, pages 438 etc. Records of Amador County.

L. J. FOUTENROSE,
County of Recorder.

Recorded at the request of Wells Fargo & Co., August 5th, 1880 at 58 min. past 9 o'clock A. M.

EXHIBIT "E"

In the Superior Court
North Carolina, Randolph County

SANDY YOUNG HOPKINS, LAURA HOPKINS KIRK, NORMAN LEE FREEMAN
and BLANCHE FREEMAN, et al.,

vs.

W. L. HILL.

JUDGMENT

This cause coming on to be heard at October Term, 1931, of the Superior Court of Randolph County before His Honor, N. A. Sinclair, Judge, and a jury, and the jury having answered the issues submitted to them as follows:

1. Were James Hopkins, John Hopkins, Joseph Hopkins, Martin Hopkins, Elizabeth Hopkins, Pru-

dence Hopkins, Annie Hopkins, Mark Hopkins, Moses Hopkins and Rebecca Hopkins the children, heirs-at-law and next of kin of Edward Hopkins and Hannah Crow Hopkins of Crow Creek, New Hope Township, Randolph County, North Carolina.

Answer: Yes.

2. If so, was Mark Hopkins, son of Edward and Hannah Crow Hopkins the same person who went to California and became Treasurer of the Central Pacific Railroad and an organizer of the Ione Coal and Iron Company?

Answer: Yes.

3. Are the plaintiffs in this action the heirs-at-law and next of kin of the said Edward Hopkins, Hannah Crow Hopkins, Mark and Moses Hopkins?

Answer: Yes.

4. Are the plaintiffs the owner of the land described in the complaint?

Answer: No.

It is Therefore considered and adjudged that the plaintiffs are the sole heirs-at-law of Edward Hopkins and Hannah Crow Hopkins, and of Mark Hopkins and Moses Hopkins, but that the plaintiffs are not the owners of the land described in the complaint, the same being to the defendant, W. L. Hill. It is further adjudged that the plaintiffs pay the cost of the action, to be taxed by the clerk.

H. A. SINCLAIR,
Judge Presiding.

North Carolina

Randolph County

I, Maude Lee Boling, Ass't Clerk Superior Court of said County and State, do hereby certify the attached sheets to be and contain a true and correct copy of the complaint, Issues and Judgment in an action entitled Sandy Young Hopkins, Laura Hopkins Kirk, Norman Lee Freeman and Blanche Freeman, et als, vs. W. L. Hill, the same being taken from and compared with the original records on file in this office.

Witness my hand and Official Seal, this 10th day of November, 1944.

MAUDE LEE BOLING,
Ass't Clerk Superior Court.

EXHIBIT "F"

LIST OF HEIRS

Ella Moore Haggard, 44 Gillis Rd-Craddock, Portsmouth, Va.

Florence Crawford, Eldorado, N. C.

Chas. H. Crawford, Eldorado, N. C.

Mrs. Thomas Lee Cotton, Gonzaler, Texas.

H. F. Robinson, 1204 Ashboro St., High Pt., N. C.

Mary Hopkins, Burns, Ashboro, N. C.

Edna Hardison Morris, Eldorado, N. C.

Suda Russell Coffey, Jackson Creek, N. C.

R. W. Slate, High Point, N. C.

Jennie Hall, Thomasville, N. C.

Lulla Hopkins Smith, Denton, N. C., Star Rt.

Mrs. W. Vance Williams, Albemarle, N. C.

Mrs. J. R. Hill, Troy, N. C., Ophis Rt.
(Sadie B. Haithecock, Washington, D. C.)
George L. Haithecock, 139 Canal St., S. E. Zone 3)
W. E. Burgess.
Mrs. W. E. Burgess, Durham N. C.
C. M. Bishop Parker, 4209 County St., Portsmouth,
Va.
Mrs. Carl Griffin, Green St., High Point, N. C.
Eula Drissom Luthes, Eldorado, N. C.
H. T. Grissom, Eldorado, N. C.
Jones M. Griffin, Rt. 4, Box 539, High Point, N. C.
J. M. Griffin, High Point, N. C.
E. K. Grissom, Troy, N. C. Ophis Rt.
Mary Ethel B. Stephens, Rt. 1, Raleigh, N. C.
Eturre S. Thompson, 403 Liberty St., Durham, N. C.
Lillie Harris Cashalt, Box 473, Badin, N. C.
Oscar A. Griffin, Box 95, Thomasville, N. C.
N. E. Chandler, Thomasville, N. C.
R. A. Henderson, Saxapahaw, N. C.
Mrs. W. E. More, Rt. 1, Raleigh, N. C.
Wake C. Moore, Rt. 1, Raleigh, N. C.
Mrs. George Moore White, Raleigh, N. C.
Mrs. Thomas Moore Graham, Raleigh, N. C.
William D. Moore, Raleigh, N. C.
Clyde Moore Perry, Raleigh, N. C.
Ella Moore, Raleigh, N. C.
Eva Moore, Raleigh, N. C.
Claud Moore, Raleigh, N. C.
Charley Moore, Raleigh, N. C.
S. T. Dorthy, Rt. 2, Durham, N. C.
Mrs. Lucy Ball Dorthy, Durham, N. C.
Sophia J. Davis, 311 Kenedy St., High Point, N. C.

Walter Chambers, Rt. 1, Bahama, N. C. [55]

A. E. Chandler, Eldorado, N. C.

Alvin L. Chambers, Rt. 5, Box 283, Durham, N. C.

Mrs. Bulah Elam, Rt. 1, Candor, N. C.

Mrs. Carl Holt, Rt. 1, Albemarle, N. C.

Mrs. John F. Hill, Badin, N. C.

Auleva Davis Hicks, Box 514, Roxboro, N. C.

Mrs. Irvan Holcomb, Hamptonville, N. C.

Mrs. Melgum Hicks, Box 514, Roxboro, N. C.

Mrs. Alma Hopkins, Eldorado, N. C.

Mrs. Willie Moore Stephens, Raleigh, N. C.

Mary Louise Moore, Raleigh, N. C.

Edgar Moore, Raleigh, N. C.

John T. Moore, Raleigh, N. C.

Melgum Hicks, Roxboro, N. C.

Jimmy Hopkins, Eldorado, N. C.

Sandy Y. Hopkins, Thomasville, N. C.

Benson Hardister, Badin, Box 751.

Mrs. Clarence Averett, c/o New Method Laundry,
Durham, N. C.

Clarence Everett.

Otho W. Bowling, Vesson Ave., Durham, N. C.

Victor B. Bolling, Vesson Ave., Durham, N. C.

Nellie Balkeum, 403 Short Smith St., High Point,
N. C.

Victoria Griffin Stanley, High Point, N. C.

Mrs. V. E. Hayworth, High Point, N. C.

Oscar S. Griffin, High Point, N. C.

Mrs. Eva Moore Cash, 908 Brookland P. K. Bldg.,
Richmond, (22) Va.

Winnie Davis, 311 Kennedy St., High Point, N. C.

Gary Davis.

Hal Hicks, 800 Carr St., High Point, N. C.

G. Max Harris, Box 2701, Winston-Salem, N. C.

Rodney E. Roach, Box 62, Lexington, N. C.

G. O. Pendergraph, Box 675, Waynesboro, Va.

Myrtle C. Deere, Albemarle, N. C.

Lizzie I. Nash, Albemarle, N. C.

Coya Chandler, Albemarle, N. C.

Grady Chandler, Albemarle, N. C.

Brad Chandler, Albemarle, N. C.

Reese Chandler, Albemarle, N. C.

B. E. Chandler, Albemarle, N. C.

Sandy Chandler, Albemarle, N. C.

B. A. Chandler, Albemarle, N. C.

Chas. Preston Griffin, 1090 Center St., Fayetteville,
N. C.

Mrs. Henry McKee Miller, Rougement, N. C. Rt. 2

Glen Harris Mullinax, Eldorado, N. C.

Edward Dennie Chambers, 701 Kent St., Durham,
N. C. [56]

Walter Knott.

Dewey Rouch Knott, 318 N. Church St., Moores-
ville, N. C.

Mrs. Claud W. Fulk, Rt. 7, Winston-Salem, N. C.

Nellie Griffin Futrell.

S. E. Futrell, Rt. 1, High Point, N. C.

Lozella Freeman Page, 1108 Mulbery Rd., Martins-
ville, Va.

Mrs. Ighigemia Freeman, 1108 Mulbery Rd., Mar-
tinsville, Va.

Bulah Elem Walker, Rt. Box 109, Candor, N. C.

W. R. Smith, 900 Caldwell St., Statesville, N. C.

Verlie Griffin Boxley, 110 Dalton St., High Point,
N. C.

Cassie Hopkins Crawford, Eldorado, N. C.

Zebb V. Russell, Dyer, Tenn.

H. L. Grissom, Eldorado, N. C.

(Paul A. Cecil, 511 W. Green St., High Point,
N. C.)

Gilford E. Griffin, 511 W. Green St., High Point,
N. C.

Lillian Griffin Davis, Rt. 1, Thomasville, N. C.

Annie Griffin Henderson, Rt. 1, Denton, N. C.

Mrs. Mary Griffin, 1201 English St., High Point,
N. C.

Pauline Robbins, 1201 English St., High Point,
N. C.

Harry S. Griffin, 1201 English St., High Point,
N. C.

Norman Griffin, Rt. 5, Box 501, High Point, N. C.

Mrs. E. P. Walters, Timberlake, N. C.

L. T. Walters, Wake Forest, N. C.

Elishal L. Chandler, Highland St., High Point,
N. C.

Clide Russell, Eldorado, N. C.

Sula Grissom Hill, Ophie Rt., Troy, N. C.

Pattie Hardison McKinney, Badin, N. C.

Millie Coggins Cagle, Eldorado, N. C.

Roy Coggins, Troy, N. C.

Paul D. Pendergraph, Hillsboro Rd., Chapel Hill,
N. C.

Lizzie Hunt Rhew, 827 Mangum St., Durham, N. C.
N. Y. Rhew, Rougemont, N. C.

(Pauline Russell Overcash.

(H. H. Russell, 325 S. Sham St., Salisbury, N. C.
Fred Oliver Roach, 413 Short St., High Point,
N. C.

H. M. Roach, 710 West Green St., High Point,
N. C.

Edith Roach, 413 Short Smith St., High Point,
N. C.

Mrs. Brice Russell, 325 S. Shaver St., Salesbury,
N. C.

(Moses H. Russell.)

(Stella Russell, 139 Carroll St., S. E. Washington,
D. C.) [57]

(Asa Rhew.)

(Annie Rhew), Rougemont, N. C.

Molly W. Pendergraph, 809 W. Main St., Durham,
N. C.

Maggie Robinson, 1106 Spruce St., Durham, N. C.

Mrs. C. L. Daniels, 1106 Spruce St., Durham, N. C.

Mrs. J. B. Walters, 1106 Spruce St., Durham, N. C.

Miss Vanger Walters, Broad St., Durham, N. C.

W. E. Latta, Arnette Ave., Durham, N. C.

Mabel Howell Brice, 713 Arnette Ave.,

James E. Howell, 713 Arnette Ave., Durham, N. C.

Eunice Latta Overton, Oxford, N. C.

Viola Latta Floyd, Rt. 2, Kittrell, N. C.

Emma Howell Latta, Durham, N. C.

Estele Latta, Durham, N. C.

Susan Brown, Durham, N. C.

Ruby C. Casey, 1122 Halbrook St., N. E. Wash-
ington (2) D. C.

Melba Cathra Tilley, 302 Ballemly St., Durham,
N. C.

- William S. Tilley, 302 Ballemly St., Durham, N. C.
Mrs. W. A. Chambers, Rt. 1, Rougemont, N. C.
Ida Yates, Rt. 5, High Point, N. C.
Dr. W. A. Lackey, 507 Main St., High Point, N. C.
J. A. Chambers, Rt. 2, Timberlake, N. C.
M. G. Chambers, Rt. 2, Rougemont, N. C.
L. C. Chambers, Rt. 1, Roxboro, N. C.
(Sterling F. Chambers.)
(W. C. Chambers), Timberlake, N. C. Rt. 1.
Dr. P. J. Chest, Southern Pines.
Sallie Lee Coggins Cobb, Rt. 2, New London, N. C.
Roy H. Davis, P. O. Box 1211, Greensboro, N. C.
Mrs. G. L. Haithcock, 159 Carroll St., S. E. Wash-
ington (3), D. C.
Florence Cranford, Eldorado, N. C.
Helen McLawrin Blackwelder, 4712 Ralfe Rd.,
Richmont, Va.
Charlie Hertford Moore, Raleigh.
Mrs. L. L. Lefler, Concord, N. C.
Julian B. Davis, Baltimore, Md.
Chas. B. Kearns, Troy, N. C.
Rue Kearns Holton, Box 665, Thomasville, N. C.
Vernon A. Kearns, Station C, High Point, N. C.
Nina Kearns Cole, Troy, N. C.
Patric Henry Cole, Troy, N. C.
Patric Henry Cotten, 733 Arrington Ave., Rocky
Mount, N. C.
M. N. Dry, U. S. Army.
Neese Williard, High Point, N. C.
Dr. York, High Point, N. C. [58]
Mrs. Julian Oakley, c/o Melgum Hicks, Roxboro,
N. C.

J. Edgar Chambers, Rt. 1, Timberlake, N. C.
Mrs. J. Herbert Bailey, 2301 Guess, R. Durham,
N. C.
Mrs. Ira T. Browning, Rt. 2, Durham, N. C.
Eva Moore Cash, 908 E. Brockland, P. K. Blvd.,
Richmond, Va.
Lucy Ball Dorthy, Rt. 2, Durham, N. C.
Velma J. Dorthy, Rt. 2, Durham, N. C.
Mrs. Thomas Graham, Rt. 12, Raleigh, N. C.
H. B. Hunt, 321 Manpin Ave., Salisbury, N. C.
L. T. Hunt, 2407 Albuy St., Durham, N. C.
L. A. Hunt, 2426 Guest R., Durham, N. C.
Robert H. Hunt, Rt. 2, Durham, N. C.
W. S. Hunt, Rt. 2, Durham, N. C.
C. P. Hunt, 2440 Guest R., Durham, N. C.
Pervis P. Hunt, Rt. 2, Durham, N. C.
W. W. Hunt, 1106 8th St., Durham, N. C.
A. S. Hunt, 803 Kenney St., Durham, N. C.
C. W. Hunt, 1000 Brood St., Durham, N. C.
Mrs. W. E. Herring, Durham, N. C.
Mrs. I. E. Hill, Thomasville, N. C.
Lillie Harris, Box 473, Bailin, N. C.
Vana Henderson, Sarapahan, N. C.
A. Davis Hick, 311 Kennedy S., High Point, N. C.
Lula Russell Coppage, Jackson Creek, N. C.
G. E. Peeler, 125 Commerce St., High Point, N. C.
J. D. Suggs, West Green St., High Point, N. C.
C. L. Surratt, Denton, N. C.
Mrs. George White, Rt. 1, Raleigh, N. C.
Dr. J. W. Slate, High Point, N. C.
Myrtle C. Deere, Albemarl, N. C.

[Endorsed]: Filed May 2, 1947. [59]

[Title of District Court and Cause.]

FIRST ADMENDMENT TO PLAINTIFFS' COMPLAINT

Now come the plaintiffs above named, and by leave of Court first had, file this as their first Amendment to plaintiffs' Complaint on file herein, as follows:

I.

Amend the title to said complaint by adding the names, Fong May Ngo, sued herein as First Doe, and by adding the name of William Penix, sued herein as Second Doe, and by striking out the name Sacramento Investment Company, a Corporation, and inserting in lieu thereof the name Tsugi Take-moto, by striking out the name Gertrude Kahn and inserting the name Lazarus Kahn, and [60] by striking out the word "Railroad" in the name "Central Pacific Railroad Company" in the title and inserting in lieu thereof, the word "Railway."

II.

Strike out Paragraph 6 of said Complaint.

III.

Amend Paragraph 9 of said Complaint by striking out the name of "Sacramento Investment Company, a Corporation" wherever it appears in said Complaint, and insert in lieu thereof, the name Tsugie Takemoto.

IV.

Strike out the name "Gertrude Kahn" wherever it appears in said Complaint, and insert in lieu thereof, the name Lazarus Kahn.

V.

Amend Line 15 on Page 27 of Paragraph 50 of said Complaint, by striking out the figure "6" and insert in lieu thereof, the figure "5".

VI.

Amend Line 18, Page 27, Paragraph 51 of said Complaint, by inserting after the figure "4" the letters and figures "K" and "L" and "4th" and "5th" Streets.

VII.

Amend Line 20, Page 8, by striking out the word "Eastern" and insert in lieu thereof, the word "Western."

VIII.

Amend the typographical error in Lines 29 and 30, Page 9, so that the name shall be Donner Lumber and Broom Company.

IX.

Strike out Paragraph 8, Page 3, and insert in lieu thereof, the following:

The Central Pacific Railway Company, a Corporation, doing [61] business at No. 65 Market Street, San Francisco, California, with its principal office located in Salt Lake, Utah. That the Central Pacific Railway Company, a Corporation, is the successor in interest of the Central Pacific Railroad, a Corporation, and acquired title to all properties formerly owned by the Central Pacific Railroad Company, a Corporation, prior to the expiration of the Charter of said Central Pacific Railroad Company, a Corporation, and assuming all its debts and liabilities; That the said Southern Pacific Rail-

road Company leases and operates all the property of the Central Pacific Railway Company, and is the Alter Ego of the said Central Pacific Railway Company and Central Pacific Railroad Company.

X.

Amend Paragraph 63, Page 32, by striking out the word "Railroad" wherever it appears in said Paragraph and insert in lieu thereof, the word "Railway."

XI.

Amend Paragraph 68, Page 33, by striking out the word "Railroad" in the name Central Pacific Railroad Company, and insert in lieu thereof, the word "Railway" so that the name shall read, Central Pacific Railway Company.

Dated: September 10th, 1947.

BUSICK & BUSICK,
S. J. BENNETT,
CHARLES H. SECCOMBE,
WALTER H. SILER,
CARLYLE E. HIGGINS,
Attorneys for Plaintiffs.

(Duly Verified.)

[Endorsed]: Filed Sept. 10, 1947. [62]

[Title of District Court and Cause.]

AMENDMENT TO COMPLAINT

Now come the plaintiffs in the above entitled action, with leave of Court first had and obtained and file this as an amendment to Paragraph 16 of their complaint, by adding to said Paragraph 16,

after the word "estate," in line 28, page 5, the following:

That said Superior Court exceeded its jurisdiction in the appointment of said Moses Hopkins as Administrator of the Estate of Mark Hopkins, deceased, in this, that the said Moses Hopkins, under the name of Moses T. Hopkins, had been, on the 12th day of September, 1845, in the Superior Court, in the County of Orange, State of North Carolina, convicted of an infamous crime, to wit: the crime of Grand Larceny, and the said purported Order of the Superior Court in and for the City and County of San Francisco, State of California, appointing said Moses Hopkins Administrator was null and void and of no force and effect, and all acts of said purported administration in the purported administration of said estate were and are null and void and of no effect. That the said Moses Hopkins, named in said purported Order appointing him Administrator of the Estate of Mark Hopkins, deceased, is the same person who was convicted of the crime of Grand Larceny, under the name of Moses T. Hopkins.

Dated: February 20, 1948.

BUSICK & BUSICK,
S. J. BENNETT,
CHARLES H. SECCOMBE,
WALTER H. SILER,
CARLYLE E. HIGGINS,
Attorneys for Plaintiffs.

(Duly Verified.)

[Endorsed]: Filed March 1, 1948. [65]

[Title of District Court and Cause.]

NOTICE OF MOTION TO DISMISS
COMPLAINT

To: the plaintiffs above named, and to Messrs. Busick & Busick, Charles H. Seccombe, Esq., S. J. Bennett, Esq., Walter H. Siler, Esq., and Carlyle Higgins, Esq., their attorneys: [66]

You and each of you will please take notice that the defendants Ira Jones, Claude A. Beagle, Vera G. Beagle, Roger L. Bondi, Marie Bondi, Joseph Devincenzi, Matilda Devincenzi, Verne Lewis, Vera M. Lewis, Drusilla N. Peip and Fred Bardoni, Sacramento Investment Company, a corporation, Vera Peniz, Jennie T. Stoll, Fred Fong, Grace Lee, Confucius Church of Sacramento, a corporation, Armade Zambra, also known as Vicente Armanda Zambra, Charles S. Howard Company, Inc., John V. Noonan and Jean Lillard, on August 18th, 1947, at the hour of 10:00 o'clock a.m. of said day, or as soon thereafter as counsel can be heard, will move the above entitled court at its court room in the court house, Post Office Building, City of Sacramento, State of California, to dismiss the above entitled action, and each and every count thereof.

Said motion will be made on the following grounds as to the entire complaint and each and every count thereof.

1. That the allegations set forth in the bill of complaint are insufficient to state a cause of action in favor of the plaintiffs or in favor of any of

the persons on whose behalf this action is brought against the defendants or any of them.

2. That the allegations set forth in the bill of complaint are insufficient upon which to base any equitable relief in favor of the plaintiffs or in favor of any of the persons on whose behalf said action is brought against the defendants or any of them.

3. That it appears by said bill of complaint that the causes of complaint are stale and that the plaintiffs and their ancestors have been guilty of gross laches and that so long a time has elapsed since the matters and things complained of took place that it would be contrary to equity and good conscience for the court to take cognizance thereof.

4. That it appears from affidavits filed with this motion and from the certified copies of documents attached thereto that the cause or causes of complaint are stale and that the plaintiffs and their ancestors have been guilty of gross laches and that they and their ancestors were appraised of the facts alleged in the complaint for a great many years prior to the filing of said bill of complaint.

5. That it appears from the allegations set forth in said bill of complaint that insofar as said bill seeks relief on the ground of fraud that the alleged cause of complaint has become barred by the statute of limitations and particularly by Section 338, Subdivision 4 thereof, of the Code of Civil Procedure of the State of California.

6. That it appears from the allegations of said bill of complaint that insofar as said bill of complaint seeks to determine title to real property that

the alleged cause of complaint is barred by the statute of limitations and particularly by Section 318 of the Code of Civil Procedure of the State of California.

7. That it appears from the allegations of said bill of complaint that insofar as said bill of complaint seeks to determine title to real property that the alleged cause of complaint is barred by the statute of limitations and particularly by Section 319 of the Code of Civil Procedure of the State of California.

8. That said bill of complaint fails to state a cause of action in law or in equity against the defendants or any of them in that it fails to allege that the plaintiffs or any of them or any of those persons on whose behalf said action is brought were the heirs of Mark Hopkins at the date of his death or that they or any of them have succeeded to the interest of any of said heirs. [68]

9. That said bill of complaint fails to state a cause of action against the defendants or any of them on the ground of fraud in that it fails to allege that the defendants or any of them were guilty of any of the fraudulent acts complained of in said bill of complaint or that said defendants or any of them had any knowledge of said fraud at any time and that said defendants or any of them had knowledge of any facts which should have put them upon inquiry.

10. That insofar as said bill of complaint seeks to have this court determine who were in fact the heirs of Mark Hopkins, deceased, said bill of com-

plaint fails to state a claim within the jurisdiction of this court.

11. That insofar as said bill of complaint seeks relief on the ground that the decree of final distribution in the Estate of Mark Hopkins, deceased, was void on its face, said bill of complaint fails to state a claim against the defendants or any of them.

12. That insofar as said bill of complaint seeks to have this court appoint an administrator do bonis non said bill of complaint fails to state a claim within the jurisdiction of this court.

13. That insofar as said bill of complaint seeks relief on the ground that the administrators of the Estate of Mark Hopkins, deceased, failed to disclose to the Probate Court in the administration of the Estate of said Mark Hopkins, deceased, certain properties belonging to the estate of Mark Hopkins, deceased, or on the ground that certain property belonging to Mark Hopkins, deceased, were not administered upon by the probate court administering his estate said claim has been determined adversely to the plaintiffs and the persons on whose behalf said action is brought by a **final judgment of [69]** the District Court of the United States for the Northern District of California, Southern Division, in the case of Freeman, et al., vs. Hopkins, et al., No. 1842-Equity.

14. That insofar as said bill of complaint seeks to state a cause of action in equity against the defendants or any of them on the grounds of extrinsic fraud in the procurement of the decree of

distribution in the matter of the Estate of Mark Hopkins, deceased, said bill of complaint fails to state a cause of complaint.

15. That the complaint fails to state a claim upon which relief can be granted in this: the complaint fails to show that the decree of distribution rendered in the Estate of Mark Hopkins was void on its face, it affirmatively appearing from copy of said decree annexed to the complaint as Exhibit A that said decree was not void; and said complaint fails to contain any allegations of facts constituting extrinsic fraud on the part of Moses Hopkins or Mary Frances Sherwood Hopkins, or their heirs or successors in interest.

16. That the complaint fails to state a claim upon which relief can be granted in this: that it appears from the face of said complaint that the matter is *res adjudicata*, petition for letters of administration *de bonus non* upon the Estate of Mark Hopkins, deceased, having been filed in the Superior Court of the State of California, in and for the City and County of San Francisco, on January 27th, 1947, and denied on March 19th, 1947, and that said denial of said petition is now final.

17. That the court lacks jurisdiction over the subject matter. [70]

18. That the court lacks jurisdiction over persons who are necessary and indispensable parties to said action, that is to say, that the heirs and successors in interest of Moses Hopkins and Mary Frances Sherwood Hopkins, necessary and indispensable parties to said action, are not included

among either the plaintiffs or the defendants therein, and the court lacks jurisdiction over them herein.

19. That the allegations of paragraphs 14, 15, 17, 18, and that portion of the complaint starting with line 20 and ending with line 50, page 13, and paragraphs 23, 28, 29, 30, 32, 33 and 34 of said complaint are mere conclusions of law and not statements of ultimate facts.

20. That it does not appear from paragraphs 27, 28 and 29, under what circumstances the plaintiffs, or their ancestors, first learned of or discovered the so-called alleged fraud of Mary Frances Sherwood Hopkins and Moses Hopkins.

21. That it does not appear from said complaint whether or not the alleged ancestors in interest of the plaintiffs had knowledge of the probate proceedings in the estate of Mark Hopkins prior to 1945.

22. That the decree attached to said complaint and marked "Exhibit E" is of no force and effect because the same is not binding on the courts of the State of California. The Superior Court of the State of California, sitting in probate, is the only court having jurisdiction to determine to whom the property of a party dying a resident of the State of California should go to, and who are the heirs of said decedent.

23. That the claims of these plaintiffs are stale.

24. That the plaintiffs and their ancestors are guilty of laches.

25. That the complaint and each count thereof is barred by laches. [71]

26. That the plaintiffs and their ancestors in interest had full knowledge of the alleged fraud at least as early as 1925, as will more fully appear from the affidavit of Royal E. Handlos filed herewith, and the exhibits attached thereto.

27. That the complaint fails to allege the knowledge, or lack of knowledge, or the lack of means of knowledge of the ancestors of the plaintiffs of the pendency of the probate proceedings in the estate of Mark Hopkins, and of the alleged fraud in the distribution thereof.

28. That the complaint fails to allege the knowledge, or lack of knowledge, or the lack of means of knowledge of the pendency of the probate proceedings in the estate of Mark Hopkins, and of the alleged fraud in the distribution thereof by those designated in the complaint as the brothers and sisters of the decedent.

29. The complaint fails to allege the relationship the plaintiffs have to those referred to in the complaint as the brothers and sisters of Mark Hopkins, deceased, and fails to allege whether or not any of the parties referred to in the complaint were entitled to distribution of any part of the estate.

The said motion will be based upon this notice, the affidavit of Royal E. Handlos, attorney for certain of the defendants, and the exhibits attached to said affidavit, the records of this court in the action in equity, No. 1842 therein, entitled "Norman Lee Freeman, for himself and others similarly

situated, plaintiff, vs. Timothy Nolan Hopkins, alias, et al., defendants, filed in the Southern Division of the United States District Court for the Northern District of California, on February 25th, 1927, oral and documentary [72] evidence to be adduced at said hearing, and all records, pleadings and files in said action.

Dated: July 30th, 1947.

ROYAL E. HANDLOS,

Attorney for Ira Jones, Claude A. Beagle, Vera G. Beagle, Roger L. Bondi, Marie Bondi, Joseph Devincenzi, Matilda Devincenzi, Verne Lewis, Vera M. Lewis, Drusilla M. Peip and Fred Bardoni.

LANDELS & WEIGEL,

By LANDELS & WEIGEL,

Attorneys for Vera Peniz, Charles S. Howard Company, Inc., John V. Noonan and Jean Lillard.

LANDELS & WEIGEL,

By LANDELS & WEIGEL,

and

DRIVER, DRIVER & DRIVER,

By PHILIP F. DRIVER,

By DRIVER, DRIVER & DRIVER.

Attorneys for Grace Lee, Fred Fong and Armade Zambra, also known as Vicente Armada Zambra.

DRIVER, DRIVER & DRIVER,

By PHILIP F. DRIVER,

By DRIVER, DRIVER & DRIVER,

Attorneys for Confucius Church of Sacramento, a corporation.

J. FRANCIS O'SHEA,

Attorney for Jennie T. Stoll.

T. L. CHAMBERLAIN,

Attorney for Sacramento Investment Company, a
corporation. [73]

(Acknowledgment of Service attached.)

[Endorsed]: Filed July 31, 1947.

[Title of District Court and Cause.]

AFFIDAVIT OF ROYAL E. HANDLOS IN
SUPPORT OF MOTIONS TO DISMISS

State of California,

City and County of San Francisco—ss.

Royal E. Handlos, being first duly sworn, deposes
and says:

That he is the attorney for the defendants Ira Jones, Claude A. Beagle, Vera G. Beagle, Roger L. Bondi, Marie Bondi, Joseph Devincenzi, Matilda Devincenzi, Verne Lewis, Vera M. Lewis, Drusilla N. Peip and Fred Bardoni, and is more familiar with the facts hereinafter averred than the said defendants, and of the other defendants appearing in the said action by and through their respective counsel, and for that reason makes this affidavit for and on behalf of these defendants and all other defendants represented by counsel on the motion or motions to dismiss.

That it is alleged in the complaint on file herein that the plaintiffs first discovered their alleged

causes of action in 1945 (Paragraphs 22, 28 and 29 of said complaint, pages 14, and 17 thereof); that for some years last past affiant has been familiar with the proceedings had and taken in the Superior Court of the State of California, in and for the City and County of San Francisco, in the matter of Mark Hopkins, deceased, which said proceedings are numbered 38991 Probate, 160506 Civil, 100219 Probate and 105869 Probate; that in all of these proceedings herein referred to attacks were made upon the decree of final distribution entered in the original estate proceedings November 1st, 1883, which said decree of final distribution was signed by J. V. Coffey, Judge of the Superior Court; that all of the records of the original proceedings had and taken in the matter of the estate of Mark Hopkins, deceased, were destroyed in the general conflagration of the City of San Francisco, State of California, on April 18th, 1906.

That in proceedings had in the Superior Court of the State of California, in and for the City and County of San Francisco, and numbered 38991, one P. B. McCandless filed a petition for letters of administration with the will annexed, and on the same date a document purporting to be the last will of Mark Hopkins, deceased, was filed. Thereafter on August 28th, 1926, a document entitled "Answer and Petition" was filed in said proceedings; that among the petitioners filing the said answer the following are named, to wit: Jones M. Griffin, Alvin L. Chambers, William Anderson Cothran and Susan Ann Vaughn Cothran; that attached hereto

and made a part of this affidavit and marked "Exhibit A" is a certified copy of said answer and petition.

That thereafter in the said proceedings numbered 38991 an order dismissing petition for probate of will was filed December 16th, 1926. A certified copy of this order is attached hereto, made a part hereof, and marked "Exhibit B."

That on February 25th, 1927, James H. Longden, the attorney for petitioners in the answer and petition filed August 28th, 1926, filed a dismissal of the contest. A certified copy of this dismissal is attached hereto, made a part hereof, and marked "Exhibit C."

That on October 18th, 1930, one Norman Lee Freeman, who also joined in the answer and petition hereinabove referred to, filed a petition for letters of administration de bonis non. His attorney of record was James Henry Longden. That attached hereto, made a part hereof, and marked "Exhibit D" is a certified copy of the said petition for letters of administration de bonis non.

That on October 25th, 1930, the said James H. Longden filed a dismissal of said petition. A certified copy of said dismissal is attached hereto, made a part hereof, and marked "Exhibit E."

That on November 21st, 1930, one Lela Pink Martin filed a petition for letters of administration de bonis non. That James H. Longden appeared as attorney of record for the said petitioner; that on March 2nd, 1931, said James H. Longden filed a dismissal of said petition. A certified copy of said

dismissal is attached hereto, made a part hereof, and marked "Exhibit F."

That on August 19th, 1925, Jones M. Griffin and others filed in the Superior Court of the State of California, in and for the City and County of San Francisco, a document entitled, "Petition in Equity," entitled "In the Matter of the Estate of Mark Hopkins, Deceased, No. 8494," which said petition in equity is numbered 160506 in the files of said County Clerk; that the attorney of record for said petitioners was James H. Longden. A certified copy of said petition in equity is attached hereto, made a part of this affidavit, and marked "Exhibit G."

That thereafter and on February 25th, 1927, the said James H. Longden, as attorney for said petitioners, filed a dismissal. A certified copy of said dismissal is attached hereto, made a part hereof, and marked "Exhibit H."

That thereafter and on July 27th, 1945, Alvin Chambers and Jones Griffin, appearing for themselves and for all other legal heirs of the above named decedent, filed a petition to vacate and set aside the decree of final distribution entered in the matter of the estate of Mark Hopkins, deceased, November 1st, 1883; that this petition was addressed to the Superior Court of the State of California, in and for the City and County of San Francisco, and numbered 100219 therein. A certified copy of said petition is attached hereto, made a part hereof, and marked "Exhibit I."

That thereafter Wells Fargo Bank & Trust Co.

and others appearing specially for the purpose of objecting to the jurisdiction of the court to hear said petition, moved to dismiss said petition; that said motion was duly argued and submitted, and thereafter on June 10th, 1946, the court made its order dismissing the proceedings for lack of jurisdiction. A certified copy of said minute order is attached hereto, made a part hereof, and marked "Exhibit J."

That thereafter in said proceedings No. 100219 an order for withdrawal of certain affidavits was filed January 13th, 1947. This order authorized the withdrawal of certain original affidavits filed with the Clerk of said Court February 23rd, 1946; that among the affidavits so withdrawn were two affidavits of Alvin L. Chambers, affidavit of Estella Cothran Latta and affidavit of Jones M. Griffin. That attached hereto, made a part of this affidavit, and marked "Exhibit K" is a certified copy of said order for withdrawal of certain affidavits, which contains the affidavits of Alvin L. Chambers, Estella Cothran Latta and Jones M. Griffin.

That on January 28th, 1947, in the Superior Court of the State of California, in and for the City and County of San Francisco, in the Matter of the Estate of Mark Hopkins, deceased, in a proceeding numbered 105869, a petition for letters of administration de bonis non was filed by John T. Blount. A certified copy of said petition is attached hereto, made a part of this affidavit, and marked "Exhibit L."

That the said petition came on regularly for hearing by the court on March 19th, 1947; that on that said March 19th, 1947, the court denied the said petition of John T. Blount. A certified copy of said minute book order is attached hereto, made a part hereof, and marked "Exhibit M."

That in addition to the proceedings had and taken in the Superior Court of the State of California, in and for the City and County of San Francisco, on September 30th, 1931, Norman Lee Freeman filed a petition for letters of administration de bonis non, in the Superior Court of the State of California, in and for the County of Sacramento, in the Matter of the Estate of Mark Hopkins, Deceased, which said proceedings are numbered 14987 therein; that appearing for said petitioner as attorney of record is James H. Longden. A certified copy of said petition is attached hereto, made a part of this affidavit, and marked "Exhibit N."

That the said petition came on regularly for hearing before the said court on November 9th, 1931, and the said court entered its order denying the said petition. A copy of said order of said court is attached hereto, marked "Exhibit O," and made a part hereof.

That on February 25th, 1927, a complaint in equity was filed in the Southern Division of the United States District Court, of the Northern District of California, entitled "Norman Lee Freeman, for himself and others similarly situated, plaintiff,

vs. Timothy Nolan Hopkins, alias, et al., defendants,” and numbered 1842 in the records of said court. That attached to said complaint in equity is an “Exhibit A” which purports to contain the names of the others similarly situated as the said plaintiff; that among the names so listed in said “Exhibit A” are Alvin Luther Chambers, Durham Co., North Carolina, Jones M. Griffith, Guilford Co., North Carolina, which affiant is informed and believes and therefore alleges is a misprint and should be Jones M. Griffin, and bases his information and belief on the affidavit of Jones M. Griffin attached to “Exhibit K” of this affidavit, which affidavit specifically alleges that Jones M. Griffin resides in Guilford County, North Carolina, and William Anderson Cothran, Person Co., North Carolina, and Susan Ann Cothran, Person Co., North Carolina; that affiant is informed and believes and therefore alleges that the last two persons named are respectively the father and mother of the plaintiff in this action Estella Latta; that affiant bases his information and belief upon the affidavit of Estelle Cothran Latta which is attached to and made a part of “Exhibit K” of this affidavit.

That affiant herein refers to the original records of this court in the action of Freeman vs. Hopkins and numbered 1842-Equity, and makes the said record a part of this affidavit.

That Jones M. Griffin is named as one of the parties answering the petition for the probate of the will in Probate No. 38991 above, and in the

proceedings in equity No. 160506, "Exhibit A" and "Exhibit G" respectively; that Susan Ann Vaughn Cothran and William Anderson Cothran are parties to the answer and petition filed in proceedings No. 38991, "Exhibit A" attached to this affidavit; that Alvin Chambers is a party to the answer and petition filed in proceedings No. 38991; that affiant is informed and believes and therefore alleges that Jones M. Griffin, named in said answer and petition, "Exhibit A," is one and the same as Jones M. Griffin, one of the plaintiffs in this action; that Alvin L. Chambers, **named in said answer and petition**, "Exhibit A" is one and the same person as Alwin Chambers, who is described in paragraph 34 of the complaint, page 19, as Alvin Chambers, one of the plaintiffs herein; that Estella Latta, one of the plaintiffs in the above entitled action, is the same person as Estelle Cothran Latta, who made the affidavit attached to "Exhibit K" of this affidavit.

That affiant bases his information and belief as to the identity of the plaintiffs Jones M. Griffin and Alwin Chambers as being the same parties referred to in "Exhibit A," and as to Jones M. Griffin also "Exhibit G," upon the affidavits of the said parties attached to "Exhibit K" of this affidavit.

That affiant bases his information and belief as to the identity of the plaintiff Estella Latta being Estella Cothran Latta and the daughter of William Anderson Cothran and Susan Ann Vaughn Cothran upon the affidavit of the said Estelle Cothran Latta, a part of "Exhibit K" of this affidavit, and also

upon the allegations of paragraph 34 of the complaint, page 19, where it is alleged "Estelle Cothran Latta is a direct descendant of James Hopkins, a brother of said Mark Hopkins."

That all of the Exhibits attached to this affidavit show that the plaintiffs in this action and their ancestors had full knowledge or means of knowledge of all of the alleged fraudulent acts set forth in said complaint, and had knowledge of the facts sufficient to put them upon inquiry as to such matters alleged and referred to in said complaint for more than twenty years last past.

That an examination of the names of the petitioners in "Exhibit A" and "Exhibit G" attached hereto, and in "Exhibit A" attached to the bill in equity in the action of Freeman vs. Hopkins, No. 1842-Equity in this court, shows that more than 175 names are readily identifiable with the names set forth in "Exhibit F" attached to the complaint in this action; that among the names so appearing are the names of Jones M. Griffin, Alvin L. Chambers, William Anderson Cothran and Susan Ann Vaughn Cothran, the ancestors of Estella Latta, also known as Estelle Cothran Latta; that a comparison of the names of the alleged heirs listed in equity suit No. 1842 and in this present action shows that nearly all of the names appearing in the list in the present action correspond to names appearing in the bill in equity No. 1842.

That in the petition filed in proceedings No. 100219, "Exhibit I" attached to this affidavit, in

paragraph 25 it is alleged in part as follows: (Pages 11 and 12 of Exhibit I)

“That in 1925, or thereabouts, your petitioners were informed that they had an interest in the estate of their relative, Mark Hopkins, of California, consisting of real and personal property, the exact amount and location of which were unknown to your petitioners. That thereupon said petitioners employed representatives and counsel and contributed funds for the purpose of locating and determining the estate of Mark Hopkins and of investigating and enforcing their legal rights thereto. That they were informed from time to time by their said counsel that all available legal steps were being taken, and that it was only a matter of time until their legal rights would be judicially determined and the said estate would be closed. That said heir claimants believed and relied upon their said counsel and representatives and continued so to believe until 1943, or thereabouts; that at said time plaintiffs, having lost confidence in the said representation referred to above, employed other counsel to investigate and to advise as to what had been done and what could be done in the matter of their legal rights as heir claimants to the estate of said decedent. That upon such investigation it was discovered that no proper legal steps had been taken towards the recovery of said estate, and that in fact certain actions had been commenced in the above entitled court to that end and without the knowl-

edge of consent of petitioners or any other heir claimants, and had been withdrawn."

Affiant avers that the minute order denying the petition of Alvin Chambers and Jones Griffin, filed June 10th, 1946, and dismissing the proceedings for lack of jurisdiction has become final.

That the order denying petition for letters of administration de bonis non filed by John T. Blount, which said order was filed March 19th, 1947, "Exhibit M" attached to this affidavit, has become final.

That in the action of Freeman vs. Hopkins, United States District Court, Northern District of California, Southern Division, No. 1842-Equity, an appeal was taken by the plaintiff to the Circuit Court of Appeals, Ninth Circuit, from the order dismissing the proceedings, which order was made on motion of the defendants; that the said Circuit Court of Appeals, Ninth Circuit, on May 6th, 1929, in case No. 5672, affirmed the judgment of the lower court; that the opinion of the said Circuit Court of Appeals is reported in 32 Fed. Rep. 2d. Series, page 756.

That under the laws of the State of California in effect at the time of the probating of the estate of Mark Hopkins, deceased, in 1878 to 1883, said laws provided for notice of the hearing of the petition for letters of administration by posting in three public places in the county in which the proceedings were pending, and on a petition for final distribution the law during those years provided

for notice of the hearing of said petition for final distribution to be given by posting in three public places in the county. That the decree of distribution in the estate of Mark Hopkins, deceased (Exhibit A attached to Exhibit I of this affidavit) recites that the petition came on regularly to be heard, proof having been made to the satisfaction of the court that the Clerk had given notice of the settlement of the account and the hearing of the petition for the time and in the manner theretofore ordered and directed by the said court.

That on April 18th, 1906, there was a general conflagration in the City and County of San Francisco, State of California. In that conflagration all of the records of the office of the County Clerk, including all of the records of the Superior Court of the State of California, in and for the City and County of San Francisco, were destroyed by fire; that among the records so destroyed were the records and files of said Superior Court showing the administration of the estate of Mark Hopkins, deceased; that the records in the matter of said estate have not been restored under the so-called "Destroyed Court Records Relief Law of 1906" (Deering's General Laws, Act 1028), or under any other law of the State of California, or otherwise, or at all; that it is impossible to ascertain at this time from any records what actions, steps or proceedings were taken in the matter of said estate, although it is possible to ascertain the full and com-

plete terms of the decree of final distribution entered in said estate through certified copies which were recorded in various counties, including the County of Sacramento; that a certified copy of the decree of distribution in the matter of the estate of Mark Hopkins, deceased, was recorded in the Recorder's office of the County of Sacramento, State of California, on April 7th, 1884, at 11:45 A. M. in Book 112 of Deeds, at page 537.

That the delay in bringing this proceeding until 64 years after the entry of the decree of distribution, and 41 years after the general conflagration in the City and County of San Francisco, makes it impossible for the defendants in this action to obtain the testimony of any person who was familiar with the said proceedings or the family affairs of Mark Hopkins prior to and at the time of his death, and as to the personal relationships of others to him at that time, and has impaired the ability of the defendants in this action to secure authoritative evidence necessary to them in the defense of this action, and will result in substantial prejudice to them herein.

Affiant further avers that it affirmatively appears from the exhibits attached to this affidavit that the plaintiffs herein, and their ancestors and the other persons described in "Exhibit F" attached to the complaint on file herein, are guilty of gross laches, and the persons referred to in the other exhibits

attached to this affidavit are guilty of gross laches, and are not entitled to relief in equity.

/s/ ROYAL E. HANDLOS.

Subscribed and sworn to before me this 29th day of July, 1947.

(Seal) /s/ JANE O'CONNOR,

Notary Public in and for the City and County of San Francisco, State of California.

Receipt of a copy of the foregoing Affidavit of Royal E. Handlos is hereby admitted this 31st day of July, 1947.

/s/ BUSICK & BUSICK,

/s/ CHARLES H. SECCOMBE,

/s/ S. J. BENNETT,

/s/ WALTER H. SILER,

/s/ CARLYLE HIGGINS,

Attorneys for Plaintiffs.

EXHIBIT "A"

Superior Court

No. 38991

State of California,

City and County of San Francisco—ss.

In the Matter of the Estate of Mark Hopkins,
Deceased.

ANSWER AND PETITION

John Marshall Jones Freeman, W. Percy McCanless, O. Eugene McCanless, Harry McCanless,

Daisy McCanless Davis, Gertrude McCanless Devlin, Eva McCanless Hinckley, Zebedee V. Russell, Mary Virden Johnson Russell, Hattie Olga Russell Houston, Augusta Leona Russell Muecke, Preston S. Griffin, Freda Coggins Fogleman, Boston Hopkins, Sadie Russell Heathcock, Frederick Coggins, Charles L. Coggins, Ray Coggins, Hattie Coggins Cobb, Claudie Russell Russell, Mittie Coggins Cagle, Louise Harris Russell, James Russell, Stella Saunders Grissom, Crissie Hopkins Cranford, Dora Saunders Hardester, Sula Russell Kopplemyer, Norman Lee Freeman, Addie Lou Freeman, Annie Blanche Freeman, Horace L. Freeman, Hattie Corinne Freeman Stedman, John Marshall J. Freeman, Patrick H. Cotton, Harris Russell, Jones M. Griffin, Charles Griffin, Victoria Griffin Stanley, Nellie Griffin Trotter, Hattie Griffin Roach, Burl Wood Griffin, Carl Griffin, Edde Hopkins Russell, Sandy Y. Hopkins, Oscar S. Cranford, Ida Hopkins Cranford, Guardian for 7 heirs:—(Ravon, Elsie, Vernon, Buren, Helen, Hazel, and Viola Cranford) Jennie Harris Hall, Elijah Allen Hardester, Van Harris Hall, Harvey Ciggins, Edna Hardester Morris, Margaret Harris, Glenn Harrise Mullinex, Nellie Moyle Brown, Ethel Moyle, Mary Moyle, Sadie Moyle Suggs, Agnes Hardester Hold, Florence Walker Cranford, Oscar W. Freeman, Lorena Walker Lefler, Alma Walker Hopkins, Mary Perkins Vancel, Mattie Hopkins Kline, Dora Hopkins Harden, L. V. Hopkins, J. T. Chambers, Chambers, Rebecca Riggs Tilley, Felix M. Umstead, John Umstead, Myrtle Umstead, John W. Riggs, Henry

A. Riggs, Rebecca Riggs, E. B. Riggs, William R. Riggs, James P. Riggs, J. C. Chambers, J. E. Chambers, Crissie Hopkins Steed, Callie Harris, H. W. Harris, John Riggs, Rosa Tilley, Zebedee Tilley, Kouis Benjamin Hopkins, L. D. Coggins, Moses E. Cotton, Roscoe M. Kearns, Thomas L. Cotton, Solon A. Cotton, Mrs. J. T. Cotton, individually and as Guardian for Hazel Cotton and Ava Joe Cotton, Grace Morris, individually and as Guardian for Max Morris; Frederick Morris, Jasper Morris, Shelton Morris, Mary J. Cates, Lee E. Eggs, Lundy L. Umstead, Jr., Bedford V. Riggs, Cera Riggs Wilkins, Corrinna Riggs Jacobs, Mary Ellen Riggs Williams, Annie Booth Walters Keith, Ina Mildred Walters Wagstaff, Susan and Vaughn Cothran, Rosa B. Walters Harris, William Anderson Cothran, William C. Walters, Calvin Walters, Mary K. Walters Pendergraft, James T. Walters, George Daniel Walters, William H. Walters, Mallie Walters Allen, John Walters, Addie Bell Nevilles, Edward Picket Walters, Thomas Bailey, William Bailey, Samuel Bailey, Otho Williams Hopkins, Annie Hopkins, Lucy Vaughn Maddox, Sarah Button McGowan, Ward S. Walters, J. F. Walters, Farland C. Porterfield, Minnie P. Blanchard, K. W. Harris, Beulah Walker, Elam Harrise Griffin, Lulu Grissom Hill, Beulah Grissom Luther, Fayette Grissom, Parthena Harris Chandler, Benson Asbury Hardister, Lillie Harris Cashatt, Battie Ray Hardister, Fannie Harrise Taylor, Rena Hardister Hill, Luella Hardister Smith, Martha Hopkins Sexton, Lavinna Hopkins, Lemont Hopkins,

Eli W. Harris, William Rex Smith, Maggie Dickerson, Rosanna Riggs Jones, Henrietta Riggs, George Riggs, John Dunnigan Leathers, Nora Dunn Chambers, J. G. Chambers, J. O. Chambers, Alvin L. Chambers, Isham Chambers, Mary Chambers Cash, Charles Johnson Clayton, Hardy Freeman Clayton, Lavada Clayton Brown, Samuel P. Chambers, Annie Maude Porterfield, George F. Porterfield, Silas J. Porterfield, Ralph B. Porterfield, Charles William Hunt, Luetta Emma Hunt, Susan Mebane Hunt, Samuel Hoke Hunt, John Alvis Hunt, Lucy Bell Hunt Dorothy, Samuel W. Hunt, Lawless T. Hunt, Annie Lee Hunt Browning, Luther A. Hunt, Charles P. Hunt, Robert H. Hunt, Walker W. Hunt, Nora O. Hunt, Pervis P. Hunt, Claudie B. Hunt, Joseph Hunt, Lizzie M. Hunt Rhew, Minnie M. Hunt Whitaker, Ruthie Dalman Leighton, Malie Hunt, Martha Hunt, George Hunt, Clarence Hunt, Lillie Hunt, John Arthur Vaughn, Clyde Hunt, Arthur Hunt, Margaret Hunt, Homazel Hunt, Fannie Walters McKee, Rosa Walters Monk, and John Marshall Jones Freeman for all other proper heirs of the estate, answering the petition of P. B. McCanless requesting the probate of an alleged will of the late Mark Hopkins, respectfully sheweth to the Honorable Superior Court of the State of California in and for the City and County of San Francisco, as follows:

The following allegations in the petition filed by P. B. McCanless are true and admitted:

That Mark Hopkins died in the village of Yuma in the then territory of Arizona, now State of Ari-

zona, on or about the 29th day of March, A. D. 1878 instead of 1879 as alleged in the petition.

That at the time of his death the said Mark Hopkins was a resident of San Francisco and a citizen of the State of California, and left an estate in the State of California consisting of real and personal property of great value, the exact value of which is now unknown.

Except as herein above and hereinafter admitted, the allegations and statements contained in the said petition of P. B. McCanless are untrue and denied.

Your respondent further answering specifically states:

That Mark Hopkins did not leave the will referred to in the petition of P. B. McCanless, or any other will, having died intestate.

That P. B. McCanless is not the nearest of kin of Mark Hopkins residing in the State of California, for the reason that P. B. McCanless is not related in any wise whatsoever to the late Mark Hopkins.

And it is further respectfully shown to the Court as follows:

1. That on the 19 day of August, 1925, W. P. McCanless and others addressed a petition in equity in the matter of the estate of Mark Hopkins, deceased, to the Honorable Superior Court judges of the County of San Francisco, State of California; that said petition No. 160506, was filed on the 19 day of August, 1925 in Department 9 and is now pending in said Court;

2. That each and every allegation contained in said petition is hereby re-affirmed and prayed to be considered as a part of this answer and petition, except that the said Mark Hopkins at the time of his death left four sisters instead of three sisters, their names being Annie Hopkins Russell, Prudence Hopkins Russell, Rebecca Hopkins Griffin and Elizabeth Hopkins, and a number of other relatives who, under the laws of descent and distribution of the State of California, at that time and now would be entitled to inherit the Estate of the said Mark Hopkins, deceased.

3. That your petitioners herein named are the heirs-at-law and next of kin of Mark Hopkins, deceased, who, under the laws of the State of California, are entitled to their respective distributive shares of the Estate of the late Mark Hopkins.

4. That a large portion of the property of the Estate of Mark Hopkins, deceased, has never been distributed or disposed of in such way as to prevent the proper heirs of the late Mark Hopkins from receiving said property.

5. That the alleged will filed for probate was prepared recently, many years after the death of Mark Hopkins, and is a forgery and constitutes an attempt by trick, fraud and false representations to defraud the proper heirs of the Estate of Mark Hopkins out of the property to which they are justly entitled.

Wherefore, your petitioners pray:

1. That the will herein filed be not admitted to probate:

2. That P. B. McCanless be not appointed administrator;

3. That the decree of distribution entered in this Court on the 1st day of November, 1883, be set aside and declared null and void;

4. That the Estate of the late Mark Hopkins be re-opened for a proper distribution among the rightful heirs;

5. That an administrator be appointed to ascertain and report to the Court the exact amount of property now belonging to the Estate of the late Mark Hopkins;

6. That the Court ascertain or cause to be ascertained the names and relationship of the proper and lawful heirs and distributees of the Estate of the late Mark Hopkins;

7. For an order distributing the Estate of the late Mark Hopkins to the proper parties;

8. For such other and further relief as your petitioners may be entitled to have.

JAMES H. LONGDEN,
VICTOR S. BRYANT,
Attorneys for Petitioners.

John Marshall Jones Freeman, for himself and the other petitioners, being duly sworn, deposes and says that he has read the foregoing answer and petition and that the same is true of his own knowl-

edge except as to those matters and things therein stated upon information and belief, and as to those he verily believes it to be true.

JOHN MARSHALL JONES
FREEMAN.

Sworn to and subscribed before me this 23 day of Aug., 1926.

(Seal) J. W. HIATT,
Notary Public.

My Commission Expires December 6, 1926.

[Endorsed]: Filed Aug. 28, 1926.

“EXHIBIT B”

In the Supuerior Court of the State of California,
in and for the City and County of San Francisco.

No. 38,991—Dept. No. 9

In the Matter of the Estate of Mark Hopkins, Deceased.

ORDER DISMISSING PETITION FOR
PROBATE OF WILL

The petition of P. B. McCandless for the probate of the document filed herein on or about the 6th day of August, 1926, as the last will and testament of Mark Hopkins, deceased, came on regularly for hearing this 16th day of December, 1926, in the above entitled court, after due and legal notice, Messrs. Hart & Rich and H. E. Witherspoon, Esq.,

appearing as attorneys for the proponent, P. B. McCandless.

Thereupon, Rich, Esq., representing the said firm of Messrs. Hart & Rich, attorneys for the petitioner, made a statement in open court that he had become satisfied from his investigations that the alleged will is a forger. Thereupon H. E. Witherspoon, Esq., one of the attorneys for said proponent, made a similar statement to the court.

Upon hearing said statements, and no other statement having been made to the court, and no proof having been offered in support of said alleged will, and the court being fully advised in the premises:

It is ordered, adjudged and decreed that said document is a forgery and not the will of said Mark Hopkins, deceased; that the petition for the probate of said document be and the same is hereby denied; and it is hereby further ordered, adjudged and decreed that the said proceeding for the probate of the said alleged will be and the same is hereby dismissed with prejudice.

Done in open court this 16th day of December, 1926.

(Seal)

FRANK H. DUNNE,

Judge of the Superior Court.

[Endorsed]: Filed Dec. 16, 1926.

EXHIBIT C

In the Superior Court of the State of California,
in and for the City and County of San Francisco.

No. 38991—Department No. 9

In Open Court, Feb. 25, 1927

In the Matter of the Estate of Mark Hopkins, Deceased.

The Clerk of the above court is hereby requested to dismiss the contest filed on behalf of certain claimants in said cause.

JAMES H. LONGDEN,
Attorney for Contestants.

[Endorsed]: Filed Feb. 25, 1927.

EXHIBIT D

No. 38991

In the Matter of the Estate of Mark Hopkins, Deceased.

PETITION FOR LETTERS OF ADMINISTRATION
DE BONIS NON

To the Honorable, the Superior Court of the City and County of San Francisco, State of California.

Your petitioner respectfully represents that the is a resident of the County of Guilford, State of North Carolina.

That on or about the 29th day of March, 1878,

Mark Hopkins died in the County of Yuma, The then Territory of Arizona, leaving no will.

That on the 3rd day of June, 1878, Mary Frances Sherwood Hopkins was appointed Administratrix of the above named decedent: that later said Administratrix was removed and in her place and stead, Moses Hopkins was appointed Administrator on the 10th day of December, 1881; that the said Administrator on the 1st day of November, 1883, closed the administration of said Estate, leaving a part of said estate unadministered; That the said Administrator has since died.

That the said decedent left real property of said estate unadministered, which, as your petitioner is informed and believes, amounts to a sum in excess of \$100,000,000.

That the said decedent left personal property located in this State, which, as petitioner is informed and believes, amounts to an amount exceeding the sum of \$50,000,000.

Wherefore, your petitioner prays that Letters of Administration de bonis non upon said Estate issue to your petitioner, as provided by law.

NORMAN LEE FREEMAN,
Petitioner.

JAMES HENRY LONGDEN,
Attorney for Petitioner.

[Endorsed]: Filed Oct. 18, 1930.

EXHIBIT E

In the Superior Court of the State of California,
in and for the City and County of San Francisco.

No. 38991

In the Matter of the Estate of Mark Hopkins, Deceased.

ORDER OF DISMISSAL

To H. I. Mulcrevy, County Clerk:

You are herewith authorized and directed to dismiss the above entitled proceeding.

JAMES H. LONGDEN,
Attorney for Petitioner.

Dated: October 22nd, 1930.

[Endorsed]: Filed Oct. 25, 1930.

EXHIBIT F

In the Superior Court of the State of California,
in and for the City and County of San Francisco.

No. 38991

In the Matter of the Estate of Mark Hopkins, Deceased.

PETITION FOR DISMISSAL

And now comes James H. Longden, attorney for Petitioner, Lela Pink Martin to be appointed Ad-

ministratrix de bonis non, of the aforesaid estate and hereby requests the Clerk of said court to enter a dismissal of the Petition heretofore filed in said action.

Oakland, California, February 27, 1931.

JAMES H. LONGDEN,

Attorney for Petitioner.

[Endorsed]: Filed Mar. 2, 1931.

EXHIBIT G

In the Superior Court of the State of California,
in and for the County of San Francisco.

No. 160506

In the Matter of the Estate of Mark Hopkins, Deceased. No. 8494.

PETITION IN EQUITY

To the Honorable, the Superior Court Judges of the
County of San Francisco, State of California:

Your petitioners W. Percy McCandless, O. Eugene McCandless, Harry McCandless, Daisy McCandless Davis, Gertrude McCandless Devlin and Eva McCandless Hinckley, all residing in the State of Washington, Zebedee V. Russell, residing in the State of Tennessee, Virden Mary Russell Johnson, Hattie Olga Russell Houston, and Augusta Leona Russell Muecke, all residing in the State of Texas, Prestly Griffin, residing in the State of Virginia, Freda Hopkins Fogleman, residing in the State of

South Carolina, Boston Hopkins, Sadie Russell Heathcock, Frederick Coggins, Charles Coggins, Ray Coggins, Pattie Coggins Cobb, Claudia Russell Russell, Mittie Coggins Cagle, Louise Harris Russell James Russell, Stella Saunders Grissom, Crissie Hopkins Cranford, Dora Saunders Hardester, Sula Russell Kopplemyer, Norman Lee Freeman, Addie Lou Freeman, Annie Blanche Freeman, Horace Lazelle Freeman, Pattie Corinne Freeman Stedman, John Marshall Jones Freeman, Patrick H. Cotton, Harris Russell, Jones M. Griffin, Charles Griffin, Victoria Griffin Stanley, Nellie Griffin Trotter, Hattie Griffin Roach, E. W. Burl Wood Griffin, Carl Griffin, Edie Griffin Russell, Sandy Y. Hopkins, Oscar Cranford, Ida Hopkins Cranford, Eugene Hill, Lizzie Cranford Vestal, Columbus Cranford, individually, and as guardian for Rayon Cranford, Elsie Cranford, Vernon Cranford, Buron Cranford, Helen Cranford, Hazel Cranford, and Cranford, (name unknown), Virginia Harris Hall, known also as Jennie Harris Hall, Elijah Allen Hardester, Van Harris Hall, Harvey Coggins, Edna Hardester Morris, Margaret Harris, Glenn Harris Mullenix, Nellie Moylr Brown, Ethel Moyle, and Mary Moyle all residing in the State of North Carolina, respectfully represent unto your honors:

I.

That the said Mark Hopkins, as the said probate proceedings show, died on or about March 29th, A.D. 1878, in the village of Yuma, County of Yuma, in the then territory of Arizona, and was at the

time of his death a resident of the City and County of San Francisco, State of California; and left an estate therein consisting of real and personal property of the aggregate value of ten millions of dollars. (\$10,000,000.)

II.

Said probate proceedings further show that the next of kin and heirs at law of said deceased were Mary Frances Sherwood Hopkins, age 50 years, residing in the City and County of San Francisco, who petitioned the said Court and who was granted Letters of Administration of said estate on June 3, A.D. 1878; Samuel Frederick Hopkins, age 75 years, residing at St. Clair, in the State of Michigan, and Moses Hopkins, age 60 years, residing in Sutter County, State of California.

III.

That the said Mark Hopkins, Deceased, died intestate.

IV.

That the said Mary Frances Sherwood Hopkins, administered on said estate as Administratrix to August 26th, A.D. 1881, at which time an order was made in the Superior Court of the County of San Francisco, revoking the Letters of Administration previously issued to her and removing her as Administratrix of said estate.

V.

That on December 10, A.D. 1881, Letters of Administration on said estate were issued to Moses Hopkins and recorded upon filing bond in the sum of \$13,000,000.

VI.

That on the 1st day of November, A.D. 1883, a final Decree of Distribution was entered in said estate in words and figures, to-wit: "In the Superior Court of the City and County of San Francisco, State of California, Department No. 9, Probate in the matter of the estate of Mark Hopkins, Deceased; Moses Hopkins Administrator of the estate of Mark Hopkins, Deceased, having on the 16th day of March, A.D. 1883, rendered and filed here in a full account and report of his Administration of said estate. Which account was for final distribution of said estate, and said account and petition this day coming on regularly to be heard, Proof having been made to the satisfaction of the Court that the Clerk had given notice of the settlement of said account and the hearing of said petition in the manner and for the time heretofore ordered and directed by this Court. And Mrs. Mary Frances Sherwood Hopkins the only person interested in said estate except said Administrator.

Having filed her consent in writing that said account may be settled and allowed, and it appearing by the testimony of said Administrator and the vouchers by him submitted, that said account is in all respects true and correct, and that it is supported by proper vouchers, that the residue of money in the hands of the Administrator at the time of filing said account was eight hundred and ninety-five thousand and seventy-eight dollars and one cent, (\$895,078.01).

That since the rendition of said account, there

has been received by the said Administrator, the sum of eight hundred and sixteen dollars, (\$816.) that the sum of seventy two hundred and eighty-six dollars, (\$7286.) has been expended by him as necessary expenses of administration.

The vouchers whereof together with a statement of such receipts and disbursements are now presented and filed and said statement is now settled and allowed and the payments are approved by this Court. And it appearing that all claims and debts against said decedent, all taxes on said estate and all debts, expenses and charge of administration have been fully paid and discharged and that said estate is ready for distribution and in condition to be closed.

And it appearing to the Court that the said parties in interest, to-wit: Mary Frances Sherwood Hopkins, and said Moses Hopkins, have agreed in writing that the commissions and fees of said administration of said estate shall be fixed at the sum of three hundred thousand dollars; (\$300,000.) and that the same shall be apportioned as follows: To Mary Frances Sherwood Hopkins, formerly Administratrix of said estate, the sum of two hundred and twenty-five thousand dollars, (\$225,000.) and to Moses Hopkins, Administrator as aforesaid, pay the said Mary Frances Sherwood Hopkins said sum of Two hundred and twenty-five thousand dollars, (\$225,000.) as her commissions as Administratrix of said estate, and to himself the said sum of Seventy-five thousand dollars, (\$75,000.) as his com-

mission out of the moneys in his hands, whereof distribution is hereby ordered.

It is further ordered, adjudged and decreed that the said final accounts of the said Administrator be and the same are settled, allowed and approved and that the residue of said estate hereinafter particularly described and other property not known or discovered which may belong to said estator in which said estate may have any interest be and the same is hereby distributed as follows:

Three-fourths of said estate to be distributed to the widow of said deceased, Mary Frances Sherwood Hopkins, and one-fourth of said estate to be distributed to the brother of said deceased Mark Hopkins.” * * * *

“And it is further appearing to this Court, that the parties interested in said estate on the fourth day of September, A.D. 1879, to-wit: Mary Frances Sherwood Hopkins, and Samuel F. Hopkins, did on said day, enter into an agreement in writing, wherein it was agreed among other things, that upon the final settlement of said estate the court having jurisdiction thereof, shall and may by its final decree distribute the entire amount of the real estate belonging to the said estate to said Mary Frances Sherwood Hopkins.

And it further appearing to this Court, that the said Moses Hopkins, and the said Samuel F. Hopkins did on the 13th day of March, A.D. 1880, by deed duly made, executed and delivered, convey to Mary Frances Sherwood Hopkins, all their right,

title and interest, in and to all the real estate of which the said Mark Hopkins died, seized and possessed, situated, lying and being in the State of California.

It is further ordered and decreed, that the entire amount of the real estate of which the said Mark Hopkins died, seized and possessed, and in which the said estate has any right, title and interest, be and the same is hereby set aside and distributed to Mary Frances Sherwood Hopkins, and the said conveyance of the title of property from Moses and Samuel F. Hopkins, to Mary Frances Sherwood Hopkins, is hereby approved and affirmed.

Done in open Court, this first day of November, A.D. 1883.

J. V. COFFEY,
Judge."

VII.

That the proceeds of the Estate of the said Mark Hopkins, were distributed in accordance with the terms of said Decree of Distribution.

VIII.

That during all of said time, upon information and belief, petitioners allege, that the said Mark Hopkins who died on or about March 29, A.D. 1878, left surviving him, five brothers, Moses Hopkins, James Hopkins, Martin Hopkins, John Hopkins and Joseph Hopkins, and three sisters, Annie Hopkins Russell, Prudence Hopkins Russell, and Rebecca Hopkins Griffin, all of whom resided in the State of North Carolina, and none of whom re-

ceived any part or parcel of said estate, excepting Moses Hopkins, who, resides in the State of California.

IX.

Your petitioners respectfully allege upon information and belief, that each and every of the brothers and sisters aforesaid of the said Mark Hopkins, deceased, are dead, leaving next of kin and heir your petitioners.

X.

That upon information and belief, your petitioners are the heirs at law, of the aforesaid Moses Hopkins, James Hopkins, Martin Hopkins, John Hopkins, Annie Hopkins Russell, Prudence Hopkins Russell, and Rebecca Hopkins Griffin, and as such are entitled to a share in said estate.

XI.

That during all of said time, upon information and belief, your petitioners allege that the Administrator of the Estate of the said Mark Hopkins, deceased, viz; Moses Hopkins, knew of the existence of the aforesaid brothers and sisters, and that they each and every were equally entitled to share in said estate.

XII.

That during all of said time, upon information and belief, your petitioners allege, that by omitting the names of the co-heirs, the Administrator, Moses Hopkins, by extrinsic and collateral fraud prevented a fair submission and determination of said estate; Being guilty of wilful misrepresentation or

falsehood; thereby deceiving the Court, and preventing a just and equitable distribution of said estate.

XIII.

That upon information and belief, your petitioners allege, that owing to said misrepresentation and deceit, in the administration of said estate of Mark Hopkins, they have a meritorious defense herein.

XIV.

That upon information and belief, your petitioners allege, that said misrepresentation were falsely made; Were made with knowledge of their falsity; Were made with intention to deceive.

XV.

That upon information and belief, your petitioners allege, that the notices of posting, etc., required in said estate, were constructed notices, and not of such nature as would reach beyond the confines of the State of California; That the facilities for transportation and service by mail at and during the time of the settlement of the estate of the said Mark Hopkins, were not received by the said co-heirs, namely; James Hopkins, Martin Hopkins, John Hopkins, Annie Hopkins Russell, Prudence Hopkins Russell, and Rebecca Hopkins, Griffin, and that they had no knowledge of the death and settlement of the said estate of the aforesaid Mark Hopkins.

XVI.

Your petitioners allege, that no information concerning the settlement of the said estate of the

aforesaid Mark Hopkins, was received by each or any of them prior to May 1st, A.D. 1923.

XVII.

That your petitioners are without remedy in the premises except in a Court of Equity where such matters are properly adjusted,

Wherefore, They hereby petition the Honorable Superior Court, that a decree of distribution entered in said estate on November 1st, A.D. 1883, and declare the same null and void, and of no force and effect; and that said decree also provide for the opening up of said estate, and the final settlement therein, and that a trust be created for the proper and judicious handling of the said estate for the benefit and use of your petitioners, and for such they will ever pray.

JAMES H. LONGDEN,
Attorney for Petitioners.

State of California,
County of San Francisco—ss.

James H. Longden being first duly sworn, deposes and says:

That he is the attorney for the petitioners in the within entitled action; that he makes this affidavit for and on behalf of the petitioners for the reason that the petitioners are without the bounds of the County of San Francisco, and State of California.

That he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to such matters as

are therein stated upon belief and information, and as to those matters he believes it to be true.

JAMES H. LONGDEN.

Subscribed and sworn to before me this 18th day of August, A.D. 1925.

(Seal)

HENRIETTA F. LONGDEN,

Notary Public in and for the County of Sacramento,
State of California.

My commission expires June 22nd, 1929.

[Endorsed]: Filed Aug. 19, 1925.

“EXHIBIT H”

In the Superior Court of the State of California,
in and for the City and County of San Francisco.

Department No. 9

No. 160506

In the Matter of the Estate of Mark Hopkins,
Deceased.

In Open Court—Feb. 25, 1927

The clerk of above court is hereby requested to dismiss the above action from the files of said Court, without prejudice.

JAMES H. LONGDEN,
Attorney.

[Endorsed] Filed Feb. 25, 1927.

EXHIBIT I

Filed: July 27, 1945, H. A. Van Der Zee, Clerk.
By J. V. Farley

In the Superior Court of the State of California
in and for the City and County of San Francisco.

No. 100219

In the matter of the Estate of Mark Hopkins,
Deceased.

PETITION TO VACATE AND SET ASIDE
FINAL DECREE OF DISTRIBUTION.

To the Honorable, the above entitled Court, your
petitioners respectfully show:

1.

That Petitioners, Alvin Chambers and Jones Griffin, appear for themselves and for all other legal heirs of the above named, deceased.

That Dr. J. W. Slate appears as the lawfully constituted Attorney in Fact to act for and on behalf of certain legal heirs of Mark Hopkins, deceased, and under and pursuant to said power of attorney is authorized to institute and prosecute suits in their behalf, and otherwise to act for them and in their stead in the premises.

2.

That Mark Hopkins died intestate on or about the 29th day of March, 1878, and was at the time of his death, and for some time prior thereto, a

resident of the County of San Francisco, State of California; that said decedent left neither father nor mother nor issue surviving him.

3.

That said decedent left property both real and personal in the **State of California** and in other States, that the exact amount or value of which is unknown to your petitioners.

4.

That subsequent to the death of said Mark Hopkins, one Mary Frances Sherwood, under the name of Mary Frances Sherwood-Hopkins, filed in the above entitled court her application for Letters of Administration of the estate of Mark Hopkins, deceased; that said application came on for hearing on or about the third day of June 1878, and that Letters of Administration were issued to said petitioner thereupon.

5.

That the above Honorable Court was without jurisdiction to issue said Letters of Administration in this that the hearing on said application for Letters of Administration was had without due notice having been given to the legal heirs of said decedent as required by the law governing, and more particularly as follows:

That at the time of the filing by said Mary Frances Sherwood-Hopkins of her application for Letters of Administration, said applicant well knew the names and addresses of the true and lawful heirs of said decedent; that said applicant will-

fully, knowingly, and with intent to defraud said lawful heirs, and to deceive the above Honorable Court, concealed from said court and from the Clerk thereof the names and addresses of the four (4) brothers and three (3) sisters of said Mark Hopkins: that by reason of said fraud of said applicant upon the court and said heirs, the Clerk of said court failed to mail to said heirs notice of said hearing or the time and place of said hearing, and that the said heirs received no notice thereof either directly or indirectly.

6.

That under and pursuant to said purported Letters of Administration to her issued by said Court, said Mary Frances Sherwood-Hopkins administered the estate of said decedent until her removal as administratrix on or about the 26th day of August, 1881, as will appear from the probate records in the office of the Clerk of said county.

7.

That thereafter Moses Hopkins, a Brother of Mark Hopkins, deceased, applied for Letters of Administration upon the estate of said decedent, and on or about the 10th day of December, 1881, said Court issued Letters of Administration to said Moses Hopkins.

That at the time of the filing of his said application for Letters, said Moses Hopkins well knew the names and addresses of the four brothers and three sisters of Mark Hopkins, but knowingly and willfully concealed from the Court and from the Clerk

thereof the names and addresses of said legal heirs; that by reason of said fraud of said applicant upon the Court and said heirs, the Clerk of said Court failed to mail to said heirs notice of said hearing or the time and place of said hearing, and that the said heirs received no notice thereof either directly or indirectly.

8.

That under and pursuant to said purported Letters of Administration, said Moses Hopkins administered said estate, and some time prior to the first day of November, 1883, applied to said Court for a decree of settlement of account and distribution of said estate. That petitioners and other legal heirs of the estate of Mark Hopkins did not receive, and none of them did receive, any notice, legal or otherwise, of said petition for settlement of account and final distribution, or of the time and place of hearing thereof.

9.

And petitioners further show that said purported decree of distribution of the estate of Mark Hopkins, a certified copy of which marked Exhibit "A" is annexed hereto and made a part hereof, is void upon its face, and more particularly as follows, to-wit:

That in said purported decree of distribution, the Court based its findings of fact on a contract and agreement by and between Mary Frances Sherwood-Hopkins and Moses Hopkins, and found as a fact that Mary Frances Sherwood-Hopkins was the

only person interested in said estate, except the administrator; that said court does not find it a fact, nor does it appear in said decree, that said persons are the only heirs of Mark Hopkins, said decedent; nor does it appear in said decree what interest in and to said estate of said persons, or of either of them is, as required by the law governing. And petitioners allege that the court, basing its findings of fact on a contract entered into by and between the said Mary Frances Sherwood-Hopkins and Moses Hopkins, and basing its judgment and decree upon said contract and agreement, attempted to distribute said estate pursuant thereto and without regard to the fact that Mark Hopkins died leaving surviving him four other brothers and three sisters. That said **four brothers and three sisters** were at said time living in North Carolina, and that the names of said heirs are as follows, to-wit: James Hopkins, John Hopkins, Martin Hopkins, Joseph Hopkins, Annie Hopkins Russell, Prudence Hopkins Russell and Rebecca Hopkins Griffin. That all of said heirs were residents of North Carolina and lived in and around the old homestead in Randolph County where Mark and Moses Hopkins were born and spent their young manhood days.

That said purported decree of distribution attempts to distribute the entire amount of the real estate belonging to the estate of Mark Hopkins, but fails to furnish any description, legal or otherwise, of said real property. That it does not appear in said decree whether said real estate is situate in

the State of California or in any other state of the Union. That said decree contains no reference to any deed or other instrument containing a description of said real estate or any portion thereof.

That said purported decree is based upon an alleged agreement entered into by Mary Frances Sherwood-Hopkins, Moses Hopkins and Samuel F. Hopkins, and an alleged deed executed by said Moses Hopkins and said Samuel F. Hopkins and delivered to Mary Frances Sherwood-Hopkins; that said purported decree alleges by inference that the interest of said Samuel F. Hopkins in said estate had been acquired by Moses Hopkins. That in said deed referred to in said purported decree Moses Hopkins and Samuel F. Hopkins granted to Mary Frances Sherwood-Hopkins a one-eighth interest each in and to all of the real estate of Mark Hopkins. That said deed contains no description, legal or otherwise, of the real property attempted to be conveyed thereby, nor any information whether said real property is situate in the State of California or in any other State of the Union.

That said purported decree of distribution is based upon, as to the real property of the estate of Mark Hopkins, an agreement and deed, as aforesaid, to which instrument Samuel F. Hopkins is one of the signatories. That in said purported decree Samuel F. Hopkins is not named as an heir, and that his interest, if any, in said estate is not determined; that to the contrary, in said purported decree the Court advises that all claims and debts

against said decedent had been fully paid and distributed.

10.

And your petitioners further allege that neither the said Mary Frances Sherwood-Hopkins nor the said Moses Hopkins, at any time prior to the probate proceedings herein, notified said legal heirs or any of them of the death of their brother, Mark Hopkins, or of the administration of the estate and of the distribution thereof, but kept said facts a closed secret until years later, and after the death of some of the brothers and a sister, and that when one of the descendants learned of the death of their relative, Mark Hopkins, and wrote for information relative to the estate, he received a reply from Moses Hopkins that his brother, Mark Hopkins, had died leaving a wife and nine children.

That by reason of the wanton and wilful concealment and misrepresentation of the facts concerning the death of Mark Hopkins and the administration of the estate, the other legal heirs have been deprived and defrauded of their interest in said estate; and that by reason of the fact that the proper and legal heirship was concealed and withheld from the Court by Moses Hopkins and Mary Frances Sherwood-Hopkins, the Court was unable to determine the heirship and make an equitable and legal distribution of said estate.

11.

That the brothers and sisters of Mark and Moses Hopkins, who lived at the time of the death of

Mark Hopkins in North Carolina, more than three thousand miles away from the scene of the fraudulent scheme conceived and perfected by and between the said Moses Hopkins and Mary Frances Sherwood-Hopkins, knew nothing of the death of their brother, Mark Hopkins, and the administration of his estate until long after said administration and the signing of the purported decree by the Court.

12.

That the contract and agreement by and between Moses Hopkins and Mary Frances Sherwood-Hopkins, upon which said purported decree of distribution was ordered and based, was by them conceived in collusion and as a scheme wherein the said two parties might divide said estate according to their own desires, ignoring the legal heirship and the rights and interest of the heirs who owned seven-eighths of said estate, and by reason thereof said estate was not distributed according to the legal rights and interest of the collateral heirs of said Mark Hopkins.

13.

That the said Moses Hopkins, acting as administrator of the estate of Mark Hopkins, occupied a fiduciary relation towards his brothers and sisters coupled with a relationship of trust for and on behalf of his kindred, and was bound to the utmost good faith in his transactions in his legal capacity as administrator to do justice to all concerned.

14.

That some time after the death of Mark Hopkins, and after writing three letters to Moses Hopkins in an attempt to get information regarding his estate, a letter was received by one of said legal heirs from Moses Hopkins stating that his brother, Mark Hopkins, had died leaving a wife and nine children, as aforesaid.

That one Zebedee Russell, a relative of Mark Hopkins, had information that Mark Hopkins had died, and on receiving such information said relative wrote to Moses Hopkins requesting information as to the death of Mark Hopkins and as to his estate; that said Zebedee Russell received a reply from said Moses Hopkins that his brother, Mark Hopkins, had died and had willed all of his estate to him, the said Moses Hopkins.

That said information coming from Moses Hopkins who occupied a fiduciary relation with said heirs was by them believed; that said heirs had no occasion even to suspect that the information contained in said letter was not true as to the wife and nine children, and relied on said information and were lulled to sleep and abandoned the idea of further investigation of said estate until years later when they discovered said statements were false and made for the purpose of deceiving the heirs at law, and the heirs were thereby deceived. That upon the discovery that said statements were false, the legal heirs of Mark Hopkins immediately employed counsel and proceeded to unfold the secret schemes,

fraud, and misrepresentation by and between Mary Frances Sherwood and Moses Hopkins, and to assert their rights in and to said estate.

15.

That by reason of the fact that your petitioners and those similarly situated lived more than three thousand miles from the scene of action, and owing to the mode of travel and mail facilities back in the pioneer days of California in 1878 and immediately following, said Moses Hopkins and Mary Frances Sherwood-Hopkins were afforded ample opportunity to prosecute their deceptive and fraudulent scheme without the knowledge of said heirs.

16.

That on the 20th day of October, 1941, by petition previously filed in the Superior Court of Randolph County, State of North Carolina, and after a hearing in open court and a verdict of a jury, a decree was entered establishing the legal heirship and next of kin of the estate of Mark Hopkins, deceased; that said decree, a copy of which marked Exhibit "B," is annexed hereto and made a part hereof, sets forth the names of those proven to be entitled to Participate in the estate of the said Mark Hopkins, deceased.

17.

That your petitioners are informed and believe and upon such information and belief allege the facts to be that each and every person whose name appears in said Exhibit "C" is a legal descendant of the brothers and sisters of Mark Hopkins; that

said brothers and sisters are now dead and that the persons named in said Exhibit "C" are the next of kin and collateral heirs of the aforesaid Mark Hopkins, deceased.

18.

Your petitioners further allege that on April 5, 1879, prior to his appointment as administrator, the said Moses Hopkins, together with Mary Frances Sherwood-Hopkins and Samuel F. Hopkins, executed a deed in Sacramento, California, to Callis P. Huntington, Charles Miller, Albert Gallantier, and W. R. S. Foy, to and for a number of lots and parcels of land located in Sacramento and San Francisco, California, stating in the body of said deed that they were the wife and brothers of Mark Hopkins and constituted the only heirs of the deceased; that said statements were false and fraudulent; that said Samuel Hopkins was not an heir or the son of an heir of Mark Hopkins.

19.

That on March 13, 1880, the said Moses and Samuel Hopkins executed a deed to Mary Frances Sherwood-Hopkins conveying to her a one-eighth interest each of all their right, title, and interest in and to all the real estate owned by Mark Hopkins, deceased. That said deed was executed prior to the appointment of Moses Hopkins as administrator of said estate. That at the time of the execution of said deed, said Mary Frances Sherwood-Hopkins was acting as administratrix of said estate under the purported Letters of Administration thereto-

fore issued by said court; that by virtue of said Letters of Administration said Mary Frances Sherwood-Hopkins occupied a fiduciary relation and a position of trust as between herself and the legal heirs of Mark Hopkins, deceased. That Samuel Hopkins, one of the purported grantors named in said deed, had no interest in said estate and was not an heir of Mark Hopkins.

20.

Your petitioners further allege on information and belief that the said Moses Hopkins, acting as administrator and in his individual capacity, well knew the whereabouts of all the existing property and assets belonging to said estate of the late Mark Hopkins; and that, prior to his death, the said Moses Hopkins fraudulently permitted same to be concealed and hidden in order to deprive the next of kin and heirs of Mark Hopkins from the benefits of distribution thereof, thereby perpetrating a fraud upon the Court and the legal heirs.

21.

That your petitioners further allege on information and belief that the said Mary Frances Sherwood-Hopkins was never legally married to the late Mark Hopkins and was not his wife; but as your petitioners are informed, believe and allege on information and belief, was the housekeeper in the home of Mark Hopkins and knew of the relationship of Mark Hopkins and his kindred in North Carolina. That in order to perpetrate a scheme to defraud the legal heirs of Mark Hopkins, to-wit,

brothers and sisters in North Carolina, Moses Hopkins entered into a scheme and an agreement with the said Mary Frances Sherwood-Hopkins to the effect that if she would aid and abet him in his unlawful scheme he would give her three-fourths of said estate. That Mary Frances Sherwood-Hopkins did aid and abet Moses Hopkins in said fraudulent scheme and entered into the said unlawful agreement upon which the decree of distribution of the Court was based, as aforesaid, to be misleading and deceiving the Court as to the facts relative to the heirship and rights of the heirs of Mark Hopkins; that by reason of the said acts of Moses Hopkins and Mary Frances Sherwood-Hopkins, a fraud was practiced upon the Court and upon petitioners.

22.

That at the time the said Moses Hopkins applied for Letters of Administration and during his tenure as administrator, and at the time he made application for distribution and when the Court signed the decree making the distribution of the property and assets of said estate, and at the time of the execution of the deed to Callis P. Huntington, et al, stating that Mary Frances Sherwood-Hopkins was the wife of Mark Hopkins and that they were the only heirs of Mark Hopkins, Moses Hopkins knew of his own knowledge of the four brothers and three sisters and knew that they lived in Randolph County, North Carolina, and purposely concealed said facts with the intention and

purpose of deceiving the Court and defrauding the legal heirs of their rights and interests in said estate, and did deceive the Court and defraud said heirs of their interest in said estate, as aforesaid.

23.

That the fraudulent acts of Mary Frances Sherwood-Hopkins in representing herself to be the wife of the late Mark Hopkins were not discovered by your petitioners until 1943 and 1944 when your petitioners discovered the records showing that she was only the housekeeper in the home of the said Mark Hopkins.

24.

That the fraudulent acts of Moses Hopkins in representing that they were the only heirs of Mark Hopkins, as set forth herein, were not discovered until 1944.

25.

That your petitioners have used due diligence in seeking to have determined and to enforce their rights as heirs to said estate, and more particularly as follows, to-wit:

That in 1925, or thereabouts, your petitioners were informed that they had an interest in the estate of their relative, Mark Hopkins, of California, consisting of real and personal property, the exact amount and location of which were unknown to your petitioners. That thereupon said petitioners employed representatives and counsel and contributed funds for the purpose of locating and determining the estate of Mark Hopkins, and of in-

vestigating and enforcing their legal rights thereto. That they were informed from time to time by their said counsel that all available legal steps were being taken, and that it was only a matter of time until their legal rights would be judicially determined and the said estate would be closed. That said heir claimants believed and relied upon their said counsel and representatives and continued so to believe until 1943, or thereabouts; that at said time plaintiffs, having lost confidence in the said representation referred to above, employed other counsel to investigate and to advise as to what had been done and what could be done in the matter of their legal rights as heir claimants to the estate of said decedent. That upon such investigation it was discovered that no proper legal steps had been taken towards the recovery of said estate, and that in fact certain actions had been commenced in the above entitled court to that end and without the knowledge or consent of petitioners or any other heir claimant had been withdrawn.

26.

That the decree of distribution of the estate of Mark Hopkins given, made, and entered by the Court on the first day of November, 1883, is void upon its face for the reasons set forth in paragraph 9 herein.

27.

That said decree of distribution given, made, and entered by the Court on the first day of November, 1883, is void for the reason that the Court was

without jurisdiction of the subject matter of the decree and of the estate of Mark Hopkins by reason of the failure to give the legal notices upon the application for Letters of Administration on the part of Mary Frances Sherwood-Hopkins, and later on the part of Moses Hopkins, as hereinbefore set forth.

28.

That the fraudulent acts and schemes of Moses Hopkins and Mary Frances Sherwood-Hopkins, as heretofore alleged, were by them conceived, perpetrated, and executed with the intent and purpose to deceive, and were calculated to deceive and did deceive the Honorable Court and to defraud and deprive your petitioners, heirs of Mark Hopkins, of their interest in and to said estate.

29.

That Alvin Chambers, one of the petitioners herein, is a direct descendant of Joseph Hopkins, who was an elder brother of Mark and Moses Hopkins; that Jones Griffin, one of the petitioners herein, is a direct descendant of Rebecca Hopkins Griffin, who was a sister of Mark and Moses Hopkins.

30.

That the motion of petitioners herein will be made upon the grounds that the court was without jurisdiction to grant Letters of Administration upon and a decree of distribution of the estate of Mark Hopkins, and that said purported decree of distribution is void upon its face, and that said decree was obtained by fraud practiced upon the

Court and upon the heirs of Mark Hopkins; and will be based upon the foregoing petition which is offered hereby as an affidavit, and upon affidavits annexed hereto and made a part hereof, and upon such additional affidavits and documentary evidence as may be adduced at the hearing.

Wherefore, petitioners respectfully pray:

(1) For an order of the Court, after proceedings duly had to that end, vacating and setting aside the decree of distribution heretofore given, made, and entered in the matter of the estate of Mark Hopkins, deceased.

(2) For an order, after proceedings duly had to that end, that Letters of Administration issue to an administrator of the estate of Mark Hopkins.

(3) And for further relief as the Court may deem meet and equitable in the premises.

/s/ ALVIN CHAMBERS,
One of the petitioners.

/s/ CHARLES H. SECCOMBE,
Attorneys for Petitioners.

State of North Carolina,
County of Durham—ss.

Alvin Chambers, being first duly sworn deposes and says:

That he is one of the petitioners above named; that he has read the foregoing petition and knows the contents thereof and that the same is true, ex-

cept only as to the matters herein stated upon information and belief and that as to those matters he believes it to be true.

ALVIN CHAMBERS.

Subscribed and sworn to before me this 23 day of June, 1945.

(Seal)

T. J. HORTON,

Notary Public.

My Commission expires July 26, 1946.

State of North Carolina,

County of Durham—ss.

I, A. J. Gresham, deputy Clerk of the Superior Court of Durham County, North Carolina, the same being a Court of Record, having an official seal, do hereby certify that T. J. Horton whose name is subscribed to the certificate of the proof, acknowledgment, or affidavit of the annexed instrument in writing, was, at the time of taking such proof, acknowledgment, or affidavit, a Notary Public in and for said County, duly commissioned and sworn and authorized to take and certify the same; and authorized by the laws of said State to take the acknowledgments and proofs of deeds or conveyances for land, tenements, or hereditaments in said State of North Carolina; and further that I am well acquainted with the handwriting of Notary Public and verily believe the signature to the certificate of proof, acknowledgment, or affidavit is genuine.

I do further certify that the law of this State requires a Notary Public to have a seal, and that the seal of T. J. Horton hereto affixed is the seal of such Notary as required by the laws of this State.

In Witness Whereof, I have hereunto set my hand and affixed the official seal of said Superior Court, at office in Durham, North Carolina, this the 25th day of June, 1945.

A. J. GRESHAM,

Deputy Clerk Superior Court.

EXHIBIT A

In the Superior Court of the City and County of
San Francisco, State of California.

Department No. 9—Probate

In the Matter of the Estate of Mark Hopkins,
Deceased.

Moses Hopkins, Administrator of the Estate of Mark Hopkins, deceased having on the sixteenth day of March A. D. 1883, rendered and filed herein a full account and report of his administration of said Estate, which account was for a final settlement, and having with said account filed a petition for the final distribution of the Estate. And said account and petition this day coming on regularly to be heard, proof having been made to the satisfaction of the Court that the Clerk had given notice of the settlement of said account and the hearing

of said petition in the manner and for the time heretofore ordered and directed by this Court. And Mrs. Mary Frances Sherwood-Hopkins the only person interested in said Estate, except said Administrator, having filed her consent in writing, that said account may be settled and allowed. And it appearing by the testimony of said Administrator and the vouchers by him submitted that said account is in all respects true and correct and that it is supported by proper vouchers; that the residue of money in the hands of the Administrator at the time of filing said account, was Eight hundred and ninety-five thousand and seventy-eight dollars and one cent, (\$895,078.01); that since the rendition of said account there has been received by the said Administrator the sum of Eight hundred and sixteen dollars (\$816) that the sum of Seventy-two hundred and eighty-six dollars has been expended by him as necessary expenses of administration, the vouchers whereof together with a statement of such receipts and disbursements are now presented and filed and said statement is now settled and allowed and the payments are approved, by this Court; and it appearing that all claims and debts against said decedent all taxes on said estate, and all debts, expenses and charges of administration have been fully paid and discharged and that said estate is ready for distribution and in condition to be closed. And it appearing to the Court that the said parties in interest, to-wit: Mary Frances Sherwood Hopkins and said Moses Hopkins, have

agreed in writing that the commissions and fees of administration of said estate shall be fixed at the sum of Three thousand dollars; and that the same shall be apportioned as follows to Mary Frances Sherwood Hopkins, formerly Administratrix of said Estate, the sum of Two hundred twenty-five thousand dollars (\$225,000) and to Moses Hopkins the sum of Seventy-five thousand dollars (\$75,000), and that the said Moses Hopkins, Administrator as aforesaid pay the said Mary Frances Sherwood Hopkins said sum of Two hundred and twenty-five thousand dollars (\$225,000) as her commissions as administratrix of said Estate and to himself the said sum of Seventy-five thousand dollars (\$75,000) as his commissions out of the moneys in his hands whereof distribution is hereby ordered. It is further ordered, adjudged and decreed that said final accounts of the said Administrator be and the same are settled, allowed and approved and that the residue of said Estate hereinafter particularly described and any other property not now known or discovered which may belong to said Estate, or in which the said Estate may have any interest, be and the same is hereby distributed as follows. Three-fourths of said Estate to be distributed to the widow of said deceased, Mary-Frances Sherwood Hopkins, and one-fourth of said Estate to be distributed to the brother of said deceased, Moses Hopkins. The following is a particular description of said residue of said Estate referred to in this decree and of which distribution is now ordered as aforesaid. \$895,078.01 in gold coin of the United

States, cash in the hands of said Administrator. 586 $\frac{1}{4}$ Shares of the Capital Stock of the Copperopolis Railroad Company, 350 Shares of the Capital Stock of the Los Angeles and San Diego Railroad Company, 750 Shares of the Capital Stock of the Potrero and Bay View Railroad Company, 10,000 Shares of the Capital Stock of the Occidental and Oriental Steamship Company, 750 Shares of the Capital Stock of the California Pacific Railroad Company, 102 Shares of the Capital Stock of the Rocky Mountain Coal and Iron Company, 1388 $\frac{8}{9}$ Shares of the Western Development Company, $\frac{1}{4}$ of 393 Bonds of the Sacramento Valley Railroad Company, 1 Share of the Capital Stock of the Orleans Hill Vinticultural Association. And it further appearing to this Court that the parties interested in said Estate on the fourth day of September A. D. 1879, to-wit: Mary Frances Sherwood Hopkins, Moses Hopkins and Samuel F. Hopkins, whose interest in said Estate has since been acquired by Moses Hopkins, did on said day enter into an agreement in writing wherein it was agreed, among other things, that upon the final settlement of said Estate, the Court having jurisdiction thereof shall and may by its final decree distribute the entire amount of the real estate belonging to said Estate to said Mary Frances Sherwood Hopkins. And it further appearing to this Court that the said Moses Hopkins and the said Samuel F. Hopkins, did, on the thirteenth day of March, A. D. 1880 by deed duly made, executed and delivered convey to Mary Frances Sherwood Hopkins, all their right, title,

and interest in and to all the real estate of which the said Mark Hopkins died seized and possessed, situated, lying and being within the State of California. It is further ordered, adjudged and decreed that the entire amount of the real estate of which the said Mark Hopkins died seized and possessed and in which the said Estate has any right, title or interest be and the same hereby is set aside and distributed to Mary Frances Sherwood Hopkins, widow of said deceased, and the said conveyance from Moses Hopkins and Samuel F. Hopkins to Mary Frances Sherwood Hopkins is hereby approved and confirmed. Done in open Court this first day of November A. D. 1883.

J. V. COFFEY, Judge.

Statement of Receipts and Disbursements since the filing of the Final Accounty of the Administrator. Receipts

March 15—Rocky Mountain Coal & Iron Co. Div. 130.....	\$102
April 15—Rocky Mountain Coal & Iron Co. Div. 131.....	102
May 15—Rocky Mountain Coal & Iron Co. Div. 132.....	102
June 15—Rocky Mountain Coal & Iron Co. Div. 133.....	102
July 15—Rocky Mountain Coal & Iron Co. Div. 134.....	102
Aug. 15—Rocky Mountain Coal & Iron Co. Div. 135.....	102
Sept. 15—Rocky Mountain Coal & Iron Co. Div. 136.....	102
Oct. 15—Rocky Mountain Coal & Iron Co. Div. 137.....	102

\$816

1883	Disbursements	
May 3—Fees recording deed.....	15.	\$ 5
May 19—Clerk's fees	16.	15
June 29—E. B. Ryan Salary as agent.....	17.	1,500
Aug. 3—Personal property taxes C & C.....	18.	5,736
Nov. 1—Expenses of closing administration.....	19.	30

\$7,286

[Endorsed]: Filed Nov. 12, 1883 William T. Jesnon,
Clerk. By J. C. Hamilton, Deputy Clerk; W. H.
L. Barnes, Attorney for Administrator.

**Office of the County Clerk of the
City and County of San Francisco—ss.**

I, William T. Jesnon, County Clerk of the City and County of San Francisco and ex-officio clerk of the Superior Court thereof, do hereby certify the foregoing to be a full, true and correct copy of the Decree of Distribution in the Estate of Mark Hopkins, deceased, now on file and of record in my office. Witness my hand and the seal of said Court this 15th day of February A. D. 1884.

WILLIAM T. JESNON,
Clerk.

(Seal) By E. J. CASEY,
Deputy Clerk.

Recorded at Request of Wells Fargo & Co., Feb. 20, 1884, at 45 Mins. past 11 A. M. Recorded in Book 36 of Deeds page 9 Records of Napa Co. Cal. N. L. Neilsen County Recorder. By Henry Brown Deputy.

Recorded at the request of Wells Fargo & Co. March 13th, A. D. 1884 at 55 minutes past 8 o'clock A. M. in Liber 88 of Deeds page 133 Records of Solano County, Cal. F. P. Weinmann County Recorder. By F. Wm. Gabriel Deputy Recorder.

Recorded at request of Wells Fargo & Co. March 27, 1884 at 35 minutes past 9 A. M. in Liber 36 of Deeds page 405 Yolo Co. Records. R. F. Hester Recorder.

Recorded at request of Wells Fargo & Co. April 7th, 1884 at 11:45 A. M. in Book 112 of Deeds, page 537 Sacramento County Records. W. E. Gerber Recorder. By C. E. Burnham Deputy.

Recorded at Request of Wells Fargo & Co. May 5th, A. D. 1884 at 40 minutes past 10 o'clock A. M. in Liber No. 32 of Deeds page 586 et seq Yuba County Records. S. O. Gunning Recorder.

Filed and recorded at the request of Wells Fargo & Co. May 15th, 1884 at 45 minutes past 3 o'clock P. M. in Book "R" of Deeds, page 118 Records of the County of Sutter. W. H. Lee County Recorder. By C. R. Wilcoxon Deputy Recorder.

State of California,
County of Sutter—ss.

I, E. M. Boyd, County Recorder of the County of Sutter, State of California, do hereby certify that I have compared the foregoing copy of Estate of Mark Hopkins, Deceased, with the original records of the same remaining in this office, and that the same are correct transcripts thereof, and of the whole of said original records.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office, in the County of Sutter, this 30th day of June, 1932.

(Seal)

E. M. BOYD,

1772

County Recorder.

EXHIBIT B

In the Superior Court.

(Minute Docket 15 page 375)

North Carolina,
Randolph County—ss.

SANDY YOUNG HOPKINS, LAURA HOPKINS KIRK, NORMAN LEE FREEMAN and
BLANCHE FREEMAN, et al,

vs.

W. L. HILL.

JUDGMENT

This cause coming on to be heard at October Term 1931 of the Superior Court of Randolph County before His Honor, N. A. Sinclair, Judge, and a jury, and the jury having answered the issues submitted to them as follows:

1. Were James Hopkins, John Hopkins, Joseph Hopkins, Martin Hopkins, Elizabeth Hopkins, Prudence Hopkins, Annie Hopkins, Mark Hopkins, Moses Hopkins and Rebecca Hopkins and children, heirs-at-law and next of kin of Edward Hopkins and Hannah Crow Hopkins of Crow Creek, New Hope Township, Randolph County, North Carolina?

Answer: Yes.

2. If so, was Mark Hopkins son of Edward and Hannah Crow Hopkins, the same person who went to California and became Treasurer of the Central Pacific Railroad and an organizer of the Ione Coal and Iron Company?

Answer: Yes.

3. Are the plaintiffs in this action the heirs-at-law and next of kin of the said Edward Hopkins, Hannah Crow Hopkins, Mark and Moses Hopkins?

Answer: Yes.

4. Are the plaintiffs the owners of the land described in the complaint?

Answer: No.

It is therefore considered and adjudged that the plaintiffs are the sole heirs-at-law of Edward Hopkins and Hannah Crow Hopkins, and of Mark Hopkins and Moses Hopkins, but that the plaintiffs are not the owners of the land described in the complaint, the same belonging to the defendant, W. L. Hill;

It is further adjudged that the plaintiffs pay the cost of the action, to be taxed by the Clerk.

(Seal)

N. A. SINCLAIR.

Judge Presiding.

EXHIBIT C

LIST OF HEIRS

Ella Moore Haggard, 214 Duke Drive, Portsmouth, Va.

Florence Crawford, Eldorado, N. C.

Chas. H. Crawford, Eldorado, N. C.

Mrs. Thos. Lee Cotton, Ganzoler, Texas.

H. F. Robinson, High Point, N. C.

Mary Hopkins Burnes, Ashboro, N. C.

Edna Hardison Morris, Eldorado, N. C.

Suda Russell Coffey, Jackson Creek, N. C.

R. W. Slate, High Point, N. C.
Lulla Hopkins Smith, Denton, N. C.
Jennie Hall, Thomasville, N. C.
Vanger L. Walters, Durham, N. C.
Mrs. W. Vance Williams, Albermarl, N. C.
Mrs. J. R. Hill, Troy, N. C.
Sadie B. Haithecock, Washington, D. C.
George L. Haithecock, Washington, D. C.
W. E. Burgess, Durham, N. C.
Mrs. W. E. Burgess, Durham, N. C.
Susan M. Brown, Durham, N. C.
C. M. Bishop Parker, Portsmouth, Va.
Mrs. Carl Griffin, High Point, N. C.
Eula Drissom Luthes, Eleozer, N. C.
H. T. Grissom, Eleozer, N. C.
Jones M. Griffin, High Point, N. C.
Annie Griffin Henderson, Denton, N. C.
J. M. Griffin, High Point, N. C.
F. K. Grissom, Troy, N. C.
Mary Ethel B. Stephens, Raleigh, N. C.
Etture S. Thompson, Durham, N. C.
Lillie Harris Cashalt, Bodie, N. C.
Oscar A. Griffin, Thomasville, N. C.
N. E. Chandler, Thomasville, N. C.
R. A. Henderson, Saxapahaw, N. C.
Mrs. W. E. Moore, Raleigh, N. C.
Wake C. Moore, Raleigh, N. C.
Mrs. George Moore White, Raleigh, N. C.
Mrs. Thos. Moore Graham, Raleigh, N. C.
William D. Moore, Raleigh, N. C.
Clyde Moore Perry, Raleigh, N. C.
Ella Moore, Raleigh, N. C.

Eva Moore, Raleigh, N. C.
Claud Moore, Raleigh, N. C.
Charley Moore, Raleigh, N. C.
S. T. Dorthy, Durham, N. C.
Lucy Dorthy, Durham, N. C.
Sophia J. Davis, High Point, N. C.
Walter Chambers, Bahama, N. C.
A. E. Chandler, Eldorado, N. C.
Alvin L. Chambers, Durham, N. C.
Mrs. Bulah Elam, Candor, N. C.
Mrs. Carl Holt, Albermarle, N. C.
Mrs. John F. Hill, Bodie, N. C.
Euleva Davis Hicks, High Point, N. C.
Mrs. Irvan Holcomb, Hamptonville, N. C.
Mrs. Melgum Hicks, Roxboro, N. C.
Mrs. Alma Hopkins, Eldorado, N. C.
Mrs. Willie Moore Stephens, Raleigh, N. C.
Mary Louise Moore, Raleigh, N. C.
Edhar Moore, Raleigh, N. C.
John T. Moore, Raleigh, N. C.
Meligum Hicks, Roxboro, N. C.
Jimmey Hopkins, Aldorado, N. C.
Sandy Hopkins, Thomasville, N. C.
Benson Hardister, Bodie, N. C.
Mrs. Clarence Averett, Raleigh, N. C.
Otho W. Bolling, Durham, N. C.
Victor B. Bolling, Durham, N. C.
Nellie Balkeum, High Point, N. C.
Victoria Griffin Stanley, High Point, N. C.
Mrs. V. E. Hayworth, High Point, N. C.
Oscar S. Griffin, High Point, N. C.
Mrs. Eva Moore Cash, Richmond, Va.

Winnie Davis, High Point, N. C.
Gary Davis, High Point, N. C.
Hal Hicks, High Point, N. C.
G. Max Harris, Winston Salem, N. C.
Rodney E. Roach, Lexington, N. C.
G. O. Pendergraph, Waynesboro, Va.
Myrtle C. Deere, Albermarle, N. C.
Lizzie I. Nash, Albermarle, N. C.
Coza Chandler, Albermarle, N. C.
Grady Chandler, Albermarle, N. C.
Brad Chandler, Albermarle, N. C.
Reese Chandler, Albermarle, N. C.
B. E. Chandler, Albermarle, N. C.
Sandy Chandler, Albermarle, N. C.
B. A. Chandler, Albermarle, N. C.
Chas. Preston Griffin, Fayetteville, N. C.
Mrs. Henry McKee Miller, Rougemout, N. C.
Glenn Harris Mullinax, Eldorado, N. C.
Edward Dennie Chambers, Durham, N. C.
Walter Knott, Mooresville, N. C.
Dewey Rouch Knott, Mooresville, N. C.
Mrs. Claude W. Fulk, Winston Salem, N. C.
Nellie Griffin Futrell, High Point, N. C.
S. E. Futrell, High Point, N. C.
Lozella Freeman Page, Martinsville, Va.
Mrs. Iphigemia Freeman, Martinsville, Va.
Bulah Elam Walker, Candor, N. C.
W. R. Smith, Statesville, N. C.
Verlie Griffin Boxley, High Point, N. C.
Cassie Hopkins Crawford, Eldorado, N. C.
Zebb V. Russell, Dyer, Tenn.
H. L. Grissom, Eldorado, N. C.

Paul A. Cecil, High Point, N. C.
Guilford E. Griffin, High Point, N. C.
Lillian Griffin Davis, Thomasville, N. C.
Annie Griffin Henderson, Denton, N. C.
Mrs. Mary Griffin, High Point, N. C.
Pauline Robbins, High Point, N. C.
Harry S. Griffin, High Point, N. C.
Norman Griffin, High Point, N. C.
Mrs. E. P. Walters, Timberlake, N. C.
L. T. Walters, Wake Forst, N. C.
Elisha L. Chandler, High Point, N. C.
Clide Russell, Eldorado, N. C.
Sula Grissom Hill, Troy, N. C.
Pattie Hardiston McKinney, Bodin, N. C.
Millie Coggins Cagle, Eldorado, N. C.
Roy Coggins, Troy, N. C.
Paul D. Pendergraph, Chappel Hill, N. C.
Lizzie Hunt Rhew, Durham, N. C.
N. Y. Rhew, Roufemount, N. C.
Pauline Russell Overcash, Salesbury, N. C.
H. L. Russell, Salesbury, N. C.
Fred Oliver Roach, High Point, N. C.
H. M. Roach, High Point, N. C.
Edith Roach, High Point, N. C.
Mrs. Brice Russel, Salesbury, N. C.
Moses H. Russell, Washington, D. C.
Stella Russell, Washington, D. C.
Asa Rhew, Roufermont.
Annie Rhew, Roufermont.
Mary W. Pendergraph, Durham, N. C.
G. E. Peler, High Point, N. C.
Maggie Robinson, Durham, N. C.

Mrs. C. L. Daniels, Durham, N. C.
Mrs. J. B. Walters, Durham, N. C.
Mrs. Etura Thompson, Durham, N. C.
Miss Vanger Walters, Durham, N. C.
S. F. Dorthy, Durham, N. C.
Lucy Ball Dorthy, Durham, N. C.
W. E. Latta, Durham, N. C.
Mable Howell Brice, Durham, N. C.
James E. Howell, Durham, N. C.
Eunice Latta Overton, Oxford, N. C.
Viola Latta Floyd, Kittrill, N. C.
Emma Howell Latta, Durham, N. C.
Susan Brown, Durham, N. C.
Lizzie Hunt Rnew, Durham, N. C.
Ruby G. Carey, Washington, D. C.
Melba Cathra Tilley, Durham, N. C.
William S. Tilley, Durham, N. C.
Mrs. W. A. Chambers, Rougemont, N. C.
Ida Yates, High Point, N. C.
Dr. W. A. Lackey, High Point, N. C.
J. A. Chambers, Timberlake, N. C.
M. G. Chambers, Rougemont, N. C.
L. C. Chambers, Roxboro, N. C.
Sterling F. Chambers, Timberlake, N. C.
W. C. Chambers, Timberlake, N. C.
Dr. P. J. Chester, Southern Pines, N. C.
Sallie Lee Coggins Cobb, New London, N. C.
Roy H. Davis, Greensboro, N. C.
Mrs. G. L. Haithecock, Washington, D. C.
Florence Cranford, Eldorado, N. C.
Fate Grissom, Troy, N. C.
Hellen McLawrinblackwelder, Richmond, Va.

Charlie Hertford Moor, Raleigh, N. C.
Mrs. L. L. Lefler, Concordia, N. C.
Julian B. Davis, Baltimore, Maryland.
Mrs. W. Vance Williams, Albermarle, N. C.
Chas. B. Kearns, Troy, N. C.
Rue Kearns Holton, Thomasville, N. C.
Vernon A. Kearns, High Point, N. C.
Nina Kearns Cole, Troy, N. C.
Patric Henry Cotten, Rocky Mount, N. C.
M. N. Dry, High Point, N. C.
Estelle Latta, Durham, N. C.

EXHIBIT J

In the Superior Court of the State of California,
in and for the City and County of San Francisco.

Department No. 9 Probate

Court met: present Hon. T. I. Fitzpatrick Judge,
and officers of the court.

No. 100219

In the Matter of the Estate of Mark Hopkins, Deceased.

MINUTE ORDER

Motion to dismiss Wells Fargo Bank and Union Trust Company, Motion Denied.

Heretofore submitted

Motion to dismiss proceedings for lack of jurisdiction, Granted.

June 10, 1946.

FRED W. MACK,
Deputy County Clerk.

EXHIBIT K

In the Superior Court of the State of California,
in and for the City and County of San Francisco.

Dept. 9. No. 100219

In the Matter of the Estate of Mark Hopkins, Deceased.

ORDER FOR WITHDRAWAL OF CERTAIN
AFFIDAVITS

Upon motion of Charles H. Seccombe and S. J. Bennett of counsel of record for petitioners herein, and it appearing that the affidavits hereinafter referred to on file in the office of the County Clerk have not been received in evidence as exhibits nor are they a part of the record herein, and good cause therefore appearing.

It is hereby ordered, that said petitioners may and they are hereby permitted to withdraw from said files in the County clerk's office said affidavits and to substitute therefor true copies of said affidavits.

The affidavits referred to above are those of the following named persons, to wit:

Jones M. Griffin X	William G. Gibson X
Carl Griffin X	J. C. Kelly
Jones M. Griffin X	Jessie Shaw X
Della Saunders Russell X	J. H. Hearn X
Christain Bringle X	

J. Ellwood Cox X	D. N. Milton X
W. R. Jenkins X	Della Russell X
Alexander Harris X	Elmira Brookshire
Nathaniel Hall X	Jarrell X
Sula Russell Koppel-	M. C. Elam X
myer X	Marshall Jones Free-
Sula Russell Koppelmyer	man X
W. L. Cranford X	CO.. D. H. Milton X
Dora Koppelmyer	J. O. Chambers X
Cranford X	
Laura Koppelmyer	Alvin Chambers X
Ridge X	
Lucy Hunt Doherty X	Mrs. F. L. Latta
Susan Braum X	Alvin Chambers X

Dated this 13 day of January, 1947.

T. I. FITZPATRICK,
Judge of the Superior Court.

Received following above checked affidavits Jan.
13, 1947.

S. J. BENNETT.

No. 100219

North Carolina,
Durham County

In the Matter of the Estate of Mark Hopkins

AFFIDAVIT

Alvin L. Chambers, after being duly sworn, de-
poses and says:

That he is the Son of the late, William James

Chambers. That about the year of 1889 your affiant was living in the home of his Father, and one Elizabeth Chambers, a Cousin of Father, came to our home and stated that she had learned that their relative Mark Hopkins, had died in California, and left an estate.

She (Elizabeth Chambers) insisted that my Father go to California and investigate the matter, for she understood that he (Mark Hopkins) was not married. This was in the summer, and my Father stated that as soon as he gathered his tobacco crop and made a sale, he would go. Thereafter, Father, wrote as many as three letters to Moses Hopkins (Brother of Mark Hopkins) making inquiry as to the death of his relative, Mark Hopkins. He at the same time made investigations of transportation to California and return. That just prior to the time he expected to leave for California he received a letter from Moses Hopkins, your affiant then a small boy met the mail man at the gate and got the letter and carried it to his Father, who was standing in the yard of their home. My Father read the letter to me and among other things the letter stated that, Brother Mark, had died some years before and left a wife and nine children, my Father stated, that if he (Mark Hopkins) had died and left a wife and nine children, it would take all he had to care for and educate his wife and children, and he would not bother about the estate any further.

I (your affiant) have also heard my Father speak

of Mark and Moses Hopkins, being in California, often-times.

This the 7th day of February, 1946.

/s/ ALVIN L. CHAMBERS,
Affiant.

Sworn and subscribed to before me this 7th day of February, 1946.

(Seal) O. A. JOHNSON,
Notary Public.

My Commission expires 6/7/47.

State of North Carolina,
County of Durham—ss.

I, A. J. Gresham, deputy Clerk of the Superior Court of Durham County, North Carolina, the same being a court of Record, having an official seal, do hereby certify that O. A. Johnson, whose name is subscribed to the certificate of the proof, a Notary Public in and for said County, duly commissioned and sworn and authorized to take and certify the same; and authorized by the laws of said State to take the acknowledgments and proofs of deeds or conveyances for land, tenements, or hereditaments, in said State of North Carolina; and further that I am well acquainted with the handwriting of Notary Public and verily believe the signature to the certificate of proof, acknowledgment, or affidavit is genuine.

I do further certify that the law of this State requires a Notary Public to have a seal, and that

the seal of O. A. Johnson hereto affixed is the seal of such Notary as required by the laws of this State.

In Witness Whereof, I have hereunto set my hand and affixed the official seal of said Superior Court, at office in Durham, North Carolina, this 7th day of February, 1946.

(Seal) /s/ A. J. GRESHAM,

Deputy Clerk Superior Court.

No. 100219

North Carolina,
Durham County—ss.

In the Matter of the Estate of Mark Hopkins.

AFFIDAVIT

Estelle Cothran Latta, after being duly sworn, deposes and says; that she was born in Person County, N. C. December 15th, 1903, and is now 43 years of age, and resides in Durham, North Carolina.

That she is a double relative of Mark Hopkins.

That she is the daughter of William Anderson Cothran, who was the Son of Haywood Cothran; Haywood Cothran, was the son of Susannah Hopkins Cothran; Susannah Hopkins Cothran, was a daughter of James Hopkins, the said James Hopkins was a Brother of Mark Hopkins.

That she (this affiant) is the daughter of Susan Ann Vaughn Cothran, (her Mother, Mrs. William Anderson Cothran); that Susan Ann Cothran, was

the daughter of Margaret Ellen Chambers; that Margaret Ellen Chambers, was the daughter of Nancy Hopkins Chambers; that Nancy Hopkins Chambers, was a daughter of Martin Hopkins; that the said Martin Hopkins, was a Brother of Mark Hopkins and the son of Edward Hopkins and Hannah C. Hopkins.

This affiant well remembers her Father and Mother discuss Mark Hopkins and Mose Hopkins, and the existing conditions under which they left North Carolina. Mose Hopkins had stolen a horse and had deserted his wife and was indicted in the North Carolina Courts (see copies filed in the cause). Mose Hopkins never came back to North Carolina to visit his relatives, but Mark Hopkins did come back on a brief visit twice in the years of 1865 and 1877. It was generally understood in my family that Mark Hopkins was a single man and had accumulated a lot of property, and was in the Railroad business in California, and a wealthy man.

Some years later, around 1886 or 1887, the Father of this Affiant heard through a salesman that Mark Hopkins was dead. He immediately wrote to California and asked if it were true that he (Mark Hopkins) was dead, and if it were true why his immediate family at home in North Carolina were not notified of his death, and also inquired of their rights (his Mother, Father and Brother and Sisters) to participate in the settlement of his estate. Someone answered this letter, presumably Mose Hopkins, and stated in the letter that Mark Hop-

kings died and left surviving him a wife and children who inherited his estate.

This affiants Father and Mother decided that in that case they would not be entitled to inherit any portion of the estate and therefore dropped it.

Nothing else was heard from Moses Hopkins or his Brother Mark Hopkins estate until around 1925. Some man who was visiting in North Carolina from California told us that Moses Hopkins and a woman by the name of Mary Francis Sherwood Hopkins inherited Mark Hopkins estate, but that Mark Hopkins was never married. My Father (the father of this affiant) immediately called a meeting of the heirs and employed Counsel to represent them. However, we the Heirs, were misinformed about the status of the case until 1944 when we employed other Counsel to go to California and investigate the whole matter of the estate of Mark Hopkins. Upon said investigation we found that no legal proceedings had been pursued. That only two petitions had been filed in the Superior Court of San Francisco, California, and these were immediately withdrawn, all without the knowledge and consent of your Affiant or the other legal heirs.

That upon investigation of the records in California, in the years of 1944 and 1945, it was discovered that Moses Hopkins and Samuel F. Hopkins and Mary Francis Sherwood Hopkins executed a deed to certain property located in Sacramento, California, and also in San Francisco, California, setting out in the body of said deed or deeds that they were the only heirs of Mark Hopkins. It was also dis-

covered in 1944 and 1945, that Samuel F. Hopkins and Moses Hopkins executed a purported deed to Mary Francis Sherwood Hopkins, for a 1/8 interest, each, of the estate of Mark Hopkins.

This the 7th day of February, 1946.

/s/ ESTELLE COTHRAN LATTA,
Affiant.

Subscribed and Sworn to before me this 7th day of February, 1946.

(Seal) O. A. JOHNSON,
Notary Public.

My Commission expires 6/7/47.

State of North Carolina,
County of Durham—ss.

I, A. J. Gresham, deputy clerk of the Superior Court of Durham County, North Carolina, the same being a Court of Record, having an official seal, do hereby certify that O. A. Johnson whose name is subscribed to the certificate of proof, acknowledgment, or affidavit of the annexed instrument in writing, was, at the time of taking such proof, acknowledgment, or affidavit, a Notary Public in and for said County, duly commissioned and sworn and authorized to take and certify the same; and authorized by the laws of said State to take the acknowledgments and proofs of deeds or convey-

ances for land, tenements, or hereditaments in said State of North Carolina; and further that I am well acquainted with the handwriting of Notary Public and verily believe the signature to the certificate of proof, acknowledgment, or affidavit is genuine.

I do further certify that the law of this State requires a Notary Public to have a seal, and that the seal of O. A. Johnson hereto affixed is the seal of such Notary Public as required by the laws of this State.

In Witness Whereof, I have hereunto set my hand and affixed the official seal of said Superior Court, at office in Durham, North Carolina, this 7th day of February, 1946.

(Seal) /s/ A. J. GRESHAM,
Deputy Clerk Superior Court.

No. 100219

North Carolina,
Guilford County—ss.

In Re: Estate of Mark Hopkins

AFFIDAVIT

Jones M. Griffin after being duly sworn, deposes and says: That he was born, August 13th, 1872, and is now 73 years of age, and resides in Guilford County, North Carolina.

That he is the son of Augustus Griffin, was the

son of Rebecca Hopkins Griffin, who is also deceased. That Rebecca Hopkins Griffin, was the daughter of Edward and Hannah Crow Hopkins, and a sister of Mark and Moses Hopkins, that your affiant well remembers his grandmother and heard her discuss the relationship of her family.

That your affiant further avers that in 1925 he with other heirs of Mark Hopkins had information from a man, whose name your affiant does not recall, that came to High Point from California and who stated that the heirs of Mark Hopkins in North Carolina had an undivided interest in the said Mark Hopkins estate. That he died intestate. That upon receiving said information the heirs in and around High Point had a meeting and devised plans and means to make the necessary investigation of said estate in California, and sent a man out there to make said investigation and empowered him to employ counsel. That immediately counsel was employed and the heirs have pursued said matter with due diligence ever since. They have contributed from time to time over a period of 20 years, thousands of dollars towards the prosecution of the matter, and have never let up or waived in their efforts to collect their interest, or have the matter litigated to a final determination, that they might know the true status and their rights in the said estate.

That during the time since 1925 and up to 1943, the heirs were informed from time to time by their said counsel and legal representative, that all avail-

able legal steps were being taken and that it was only a matter of time until their legal rights would be judicially determined, and the said estate would be closed. That said claimants believed and relied upon their said counsel and representative and continued to so believe and contribute funds for the prosecution of their claim, up to and until 1943, or thereabouts. That at said time those interested in said estate having lost confidence in the said representative referred to above, employed other counsel to investigate and to advise them as to what had been done and what could be done in the matter of their legal rights as heir claimants to the estate of said decedent.

That upon said investigation it was discovered that no proper legal steps had been taken towards the recovery of said estate, as is shown by the records filed in the Probate Court in the County and City of San Francisco, which speaks for themselves. The facts being that actions had been commenced in said court to that end, and without the knowledge or consent of the heirs whom they represented or any of them, had been withdrawn, that the said heirs had no knowledge of these facts until they had the facts investigated in 1944. That your affiant and other heirs had been informed and led to believe that litigation was pending all this time and it was only a matter of waiting the termination of same. That by reason of the information received by your affiant and the other heirs and relied upon, the heirs have been deceived and misled and as here-

tofore alleged, the heirs owing to the distance they reside from the scene of action, had relied upon their representatives and counsel, they have used due diligence in prosecuting their rights and interest in and to said estate.

Respectively submitted,

/s/ JONES M. GRIFFIN,
Affiant.

Jones M. Griffin personally appeared before me and after being duly sworn, says, that he has read the foregoing affidavit and knows the facts to be true excepting those matters and things stated on information and belief, and to those matters and things he believes them to be true.

/s/ C. E. BILBVO,
Ass't Clerk of Court—Guilford
County, N. C.

No. 100219

North Carolina,
Durham County—ss.

In the Matter of the Estate of Mark Hopkins

AFFIDAVIT

Alvin L. Chambers, after being duly sworn, deposes and says:

That he is the Son of William James Chambers and Mary Blalock Chambers.

That William James Chambers was the Son of Benjamin Chambers and wife Polly Hopkins Cham-

bers. That, Polly Hopkins Chambers, was the daughter of Joseph Hopkins, who was my great grandfather. Joseph Hopkins, was the son of Edward Hopkins and Hannah Crow Hopkins. That Joseph Hopkins was a brother of Mark Hopkins and Mose Hopkins.

This affiant further says, that he was born in Durham County, N. C., on the 7th day of April, 1881, that he is now over 64 years of age, and is a resident of Durham County, now and has been for over 64 years.

This the 7th day of February, 1946.

/s/ ALVIN L. CHAMBERS.

Sworn and subscribed to before me this 7th day of February, 1946.

(Seal) O. A. JOHNSON,
Notary Public.

My Commission expires 6/7/47.

State of North Carolina,
County of Durham—ss.

I, A. J. Gresham, deputy Clerk of the Superior Court of Durham County, North Carolina, the same being a Court of Record, having an official seal, do hereby certify that O. A. Johnson whose name is subscribed to the certificate of the proof, acknowledgment, or affidavit of the annexed instrument in

writing, was at the time of taking such proof, acknowledgment, or affidavit, a Notary Public in and for said County, duly commissioned and sworn and authorized to take and certify the same; and authorized by the laws of said State to take the acknowledgments and proofs of deeds or conveyances for land, tenements, or hereditaments in said State of North Carolina; and further that I am well acquainted with the handwriting of Notary Public and verily believe the signature to the certificate of proof, acknowledgment, or affidavit is genuine.

I do further certify that the law of this State requires a Notary Public to have a seal, and that the seal of O. A. Johnson hereto affixed is the seal of such Notary as required by the laws of this State.

In Witness Whereof, I have hereunto set my hand and affixed the official seal of said Superior Court, at office in Durham, North Carolina, this 7th day of February, 1946.

/s/ A. J. GRESHAM,

Deputy Clerk Superior Court.

[Endorsed]: Filed Jan. 13, 1947.

EXHIBIT L

In the Superior Court of the State of California,
in and for the City and County of San Francisco.

No. 105869 Dept.

In the Matter of the Estate of Mark Hopkins, Deceased.

PETITION FOR LETTERS OF ADMINISTRATION
DE BONIS NON

To the Honorable Superior Court of the State of California, in and for the City and County of San Francisco:

The petition of John T. Blount respectfully shows:

1. That the above named Mark Hopkins died on the 29th day of March, 1878; that at the date of his death, he was a resident of the City and County of San Francisco, State of California; and that at the time of his death left property in the State of California.

2. That due search and inquiry has been made to ascertain if deceased left any will and testament, but none has been found, and according to the best knowledge, information and belief of your petitioner, said decedent died intestate.

3. That letters of administration were heretofore issued on said estate of Mark Hopkins, deceased, to Mary Frances Sherwood Hopkins; that she was removed as administratrix of said estate on the 26th day of August, 1881; and that letters of

administration of said estate were then issued to Moses Hopkins, who served as administrator of said estate until a decree of final distribution was entered in said estate on or about the first day of November, 1883.

4. That said Moses Hopkins is dead.

5. That there was left unadministered and undistributed by said decree of final distribution the sum of eight hundred sixteen (\$816.00) dollars; that it is necessary an administrator of said estate be appointed; and that letters of administration be issued herein.

6. That the property of said estate left unadministered is said sum of eight hundred sixteen (\$816.00) dollars, and that your petitioner is informed and believes, and therefore alleges that there is other property belonging to said estate left unadministered, the value of which is unknown to your petitioner.

7. That the names, ages and post office addresses of the heirs of said decedent, so far as known to your petitioner, are as follows:

(a) J. O. Chambers, a nephew, over the age of majority, and residing at R.F.D., Durham, North Carolina.

(b) Jones M. Griffin, a nephew, over the age of majority, and residing at R.F.D., High Point, North Carolina.

(c) Alvin L. Chambers, a nephew, over the age of majority, and residing at R.F.D., Durham, North Carolina.

(d) Estelle C. Latta, a grand niece, over the

age of majority, and residing at College Station, Durham, North Carolina.

(e) Della S. Russell, a grand niece, over the age of majority, and residing at Eldorado, Montgomery County, North Carolina.

8. That your petitioner is a resident of the County of Sacramento, State of California, and is a person legally competent to administer upon said estate of Mark Hopkins, deceased.

Wherefore, your petitioner prays that the clerk of this Court set the above petition for hearing according to law, and that letters of administration de bonis non be issued to him, and for such other and further relief as to the Court shall seem meet and just.

Dated: Sacramento, California, January 24th, 1947.

GEORGE L. POPERT,
Attorney for Petitioner.

State of California,
County of Sacramento—ss.

John T. Blount, being first duly sworn, deposes and says:

That he is the petitioner in the above entitled matter; that he has read the foregoing Petition for Letters of Administration and knows the contents thereof; that the same is true of his own knowledge,

except as to matters which are therein stated on information or belief, and as to those matters he believes it to be true.

JOHN T. BLOUNT.

Subscribed and sworn to before me this 24th day of January, 1947.

(Seal) GEORGE L. POPERT,
Notary Public in and for the County of Sacramento, State of California.

[Endorsed]: Filed Jan. 28, 1947.

EXHIBIT M

In the Superior Court of the State of California,
in and for the City and County of San Francisco.

Department No. 9 Probate

Court met: present Hon. T. I. Fitzpatrick, Judge,
and officers of the court.

No. 105869

In the Matter of the Estate of Mark Hopkins, Deceased.

ORDER

Petition of John T. Blount for letters of administration—Denied. Mar. 19, 1947.

G. J. ROMANI,
D.C.C.

EXHIBIT N

In the Matter of the Estate of Mark Hopkins, Deceased.

PETITION FOR LETTERS OF ADMINISTRATION DE BONIS NON

To the Honorable, The Superior Court of the City and County of Sacramento, State of California:

Your petitioner, Norman Lee Freeman, represents that he is a resident of the County of Alameda, State of California;

That on or about the 29th day of March, 1878, Mark Hopkins died in the County of Yuma, the then Territory of Arizona, leaving no will;

That on the third day of June, 1878, Mary Frances Sherwood Hopkins was appointed Administratrix of the above named decedent; that later said Administratrix was removed and in her place and stead, Mose Hopkins, was appointed Administrator on the 10th day of November, 1881; that the said Administrator on the 1st day of November 1883 closed the administration of said Estate, leaving a part of said Estate unadministered; that the said Administrator has since died;

That the said decedent left real property of said Estate unadministered, which as your petitioner is informed and believes, amounts to a sum in excess of \$30,000,000.00;

That the said decedent left personal property located in this State, which as the petitioner is in-

formed and believes, amounts to an amount exceeding the sum of \$20,000,000.00;

Wherefore, your petitioner prays that Letters of Administration de bonis non upon said Estate issue to your petitioner, as provided by law.

/s/ NORMAN LEE FREEMAN,
Petitioner.

JAMES H. LONGDON,
Attorney for Petitioner.

[Endorsed]: Filed Sept. 30, 1931.

State of California,
County of Sacramento—ss.

I, C. C. LaRue, County Clerk of the County of Sacramento, State of California, and ex-officio Clerk of the Superior Court held in and for said County and State aforesaid, hereby certify that I have compared the foregoing copy with the original instrument on file and of record in my office, and that the same is a full, true and correct copy of such original, with the endorsements thereon, and of the whole thereof.

Attest my hand and seal of said Court this July 18, 1947.

(Seal)

C. C. LaRUE,
County Clerk.

EXHIBIT O

State of California, County of Sacramento. Superior Court Probate Record Monday, November 9th, A.D. 1931. Dept. Two.

In the Matter of the Estate of Mark Hopkins, Deceased.

MINUTE ORDER

Petition for Letters of Administration. Petition for Letters of Administration, Denied.

Said Minute Order Recorded in Probate Record Book 119 at page 379, in the office of the County Clerk of the County of Sacramento, State of California.

State of California,
County of Sacramento—ss.

I, C. C. LaRue, County Clerk of the County of Sacramento, State of California, and ex-officia Clerk of the Superior Court held in and for said County and State aforesaid, hereby certify that I have compared the foregoing copy with the original instrument on file and of record in my office, and that the same is a full, true and correct copy of such original, with the endorsements thereon, and of the whole thereof.

Attest my hand and seal of said Court this July 18, 1947.

(Seal)

C. C. LaRUE,
County Clerk.

[Title of District Court and Cause.]

MOTION TO DISMISS ON BEHALF OF DEFENDANT SOUTHERN PACIFIC RAILROAD COMPANY

Comes now Defendant Southern Pacific Railroad Company (hereinafter called "Defendant") and moves the Court for an order dismissing the complaint herein, upon the following grounds:

I.

The complaint fails to state a claim against Defendant [75] upon which relief can be granted.

II.

Complaint fails to state a claim against Defendant upon which relief can be granted, in the following particulars:

(a) the complaint fails to state a cause of action in favor of the plaintiffs, or any of them, or in favor of any or all the persons on whose behalf said action is brought against Defendant, or any of the defendants, in said action:

(b) it appears from said complaint and from the affidavit of Royal E. Handlos hereinafter referred to that plaintiffs and their ancestors have been guilty of gross laches, that the alleged claims therein stated are stale, and that so long a time has elapsed since the matters and things complained of are alleged to have taken place that it would be contrary to equity and good conscience for the Court to take cognizance thereof in this proceeding:

(c) it appears from said complaint and from said affidavit of Royal E. Handlos that the alleged

cause of action is barred by the provisions of Subdivision 4 of Section 338 of the Code of Civil Procedure of the State of California;

(d) it appears from said complaint and from said affidavit of Royal E. Handlos that the alleged cause of action is barred by the provision of Section 343 of said Code.

(e) the complaint fails to show that plaintiffs, or any of them, or any of those on whose behalf said action is brought, were the heirs of Mark Hopkins at the time of his death, or that they, or any of them, have succeeded to the interests of such heirs, or any of them;

(f) that the complaint fails to show that Defendant has been guilty of any fraud or that Defendant or any of its predecessors ever had any knowledge of any facts which would have put [76] it or them upon inquiry with respect to any fraud in the premises.

(g) that the complaint fails to allege any extrinsic fraud which might form the basis of any cause of action.

(h) the complaint fails to show that the decree of distribution in the Estate of Mark Hopkins. Deceased, was void upon its face, or otherwise, or at all, it affirmatively appearing from the allegations of said complaint and from copy of said decree annexed to said complaint as Exhibit A that said decree was and is valid, all inclusive, and final.

(i) it appears from said complaint and from said affidavit of Royal E. Handlos that the matter is *res adjudicata*; petitions for letters of administration *de bonis non* upon the Estate of Mark Hopkins, Deceased, having been filed in Superior Courts of the State of California, the orders of the said Superior Courts denying such petitions are final.

(j) the complaint fails to allege the relationship of plaintiffs and those on whose behalf this action is brought to those referred to in the complaint as the brothers and sisters of Mark Hopkins, Deceased, and fails to show whether or not and wherein the plaintiffs or any of said persons were entitled to distribution of the whole or any part of the estate of said decedent.

III.

The Court lacks jurisdiction over the subject matter.

IV.

The Court lacks jurisdiction over persons who are necessary and indispensable parties to said action; that is to say, the heirs and successors in interest of Moses Hopkins and Mary Frances Sherwood Hopkins, necessary and indispensable parties to said action, are not included among either the defendants or the plaintiffs herein or among those for whom this action has been brought, and that the Court lacks jurisdiction over said necessary and indispensable parties hereto. [77]

V.

The complaint fails to state a claim within the jurisdiction of this Court in so far as it seeks to have this Court determine who were in fact the heirs of Mark Hopkins, Deceased.

VI.

The complaint fails to state a claim within the jurisdiction of this Court in so far as it seeks to compel the appointment of an administrator de bonis non.

Said motion will be based upon the pleadings, records and files in this case; upon the pleadings, records and files of this Court in the case of Norma Lee Freeman et al. v. Timothy Nolan Hopkins et al., in Equity No. 1842: upon the affidavit of Royal E. Handlos filed in conjunction with motion to dismiss on behalf of Defendant Ira Jones et al.; upon the affidavit of Roy G. Hillebrand hereto attached; upon this notice; and upon such oral and documentary evidence as may be adduced at the hearing upon this motion and that of defendants Ira Jones et al.

* * * *

To the Plaintiffs above named, and to Messrs. Busick & Busick, Charles H. Seecombe, Esq., S. J. Bennett, Esq., Walter H. Siler, Esq., and Carlyle Higgins, Esq., their attorneys:

Please take notice that the foregoing motion will be brought before the above named Court for hearing on the 18th day of August, 1947, at ten o'clock a.m. of said day, or as soon thereafter as counsel

can be heard, at the Courtroom of said Court in the Post Office Building in the City of Sacramento, State of California.

Dated: August 5th, 1947.

DEVLIN & DEVLIN &
DIEPENBROCK,

R. S. MYERS,
E. J. FOULDS,

Attorneys for Defendant Southern Pacific Railroad
Company.

[Endorsed]: Filed Aug. 11, 1947. [78]

State of California,
City and County of San Francisco—ss.

AFFIDAVIT OF ROY G. HILLEBRAND

Roy G. Hillebrand, being first duly sworn, deposes and says:

That he is, and for about 12 years last past has been, Secretary of Southern Pacific Railroad Company, a defendant in Civil Action No. 5811 pending in the District Court of the United States in and for the Northern District of California, Northern Division.

That said Southern Pacific Railroad Company is a corporation created by consolidation of corporations under the laws of California, Arizona and New Mexico in the year 1902. As Secretary of said corporation affiant has charge of its corporate books and records.

That ever since the said date of its incorporation the principal place of business and office of said defendant Southern Pacific Railroad Company has been and still is in the City and County of San Francisco, State of California, and at all of said times all of its corporate books and records have been and are kept therein, that on April 18, 1906, there was a general conflagration in the City and County of San Francisco in which the office building containing all of the corporate books and records of said defendant, including all of said corporate books and records, were destroyed by fire. Among the records so destroyed were the records of ownership and of all transfers of the capital stock of said defendant theretofore maintained by it, and the records of any bonds or other securities which may have been in its possession at that time, or at any time prior [79] thereto.

That immediately after said general conflagration said books and records of said defendant were reopened, commencing with their then current status, according to the best secondary information obtainable, and all subsequent matters involving stocks, bonds and other securities of said defendant are fully shown upon its corporate books and records.

There is no record whatsoever in said books of said Southern Pacific Railroad Company as they have existed since said general conflagration indicating that any stocks or bonds or other securities of said defendant, or at any time held by it, now or at any time ever belonged to Mark Hopkins or the Estate of Mark Hopkins, Deceased, or, so far

as they can be identified, to any person, firm or corporation which may have succeeded to said Estate or any part thereof, either as of the time of the reopening of the books and records of said company in 1906 or at any time prior thereto, or any time subsequent thereto; and, so far as known to affiant, there is now no living person who would have any information or could give testimony, regarding any stock issuance by said defendant or any stock or bonds in its possession, or transfers of its stock, or of any securities in its possession, prior to 1906.

By reason of said change in conditions it is impossible at this time to secure authentic information as to the matters aforesaid prior to the date of said general conflagration, and the delay in the commencement of said action Civil No. 5811 until after said general conflagration of 1906, and until after the death of all persons having any knowledge of said matters, has materially prejudiced defendant in its ability to defend said action. [80]

ROY G. HILLEBRAND.

Subscribed and sworn to before me this 5th day of August, 1947.

(Seal)

RUTH W. GEORGE,

Notary Public, in and for the City and County of
San Francisco, State of California.

My commission expires September 19, 1950. [81]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS FILED ON BEHALF OF SOUTHERN PACIFIC RAILROAD COMPANY

I.

This defendant adopts the points and authorities filed in connection with the motion to dismiss filed on behalf of defendant Ira Jones, et al., and, in addition submits the following:

II.

In 1878, when letters of administration upon the estate of Mark Hopkins were first applied for, the law only required notice by posting. Allegations of par. 15, pp. 4-5 and Par. B, p. 6, of complaint do not show that notice was not given to the extent then required by law.

Section 1373, Code of Civil Procedure, as it existed up to 1921. (Compare Sec. 441 of present Probate Code.)

This notice constituted due proces of law, and gave Probate Court jurisdiction to issue letters of administration.

Estate of Bump, 152 Cal. 274.

III.

In 1883, when the decree of final distribution of estate of Mark Hopkins was entered, the law only required notice by posting or publication. Allegations of par. 17, pp. 5-6, of the complaint do not show that notice was not given to the extent required by law.

Section 1668, Code of Civil Procedure, as it existed in 1883 and up to 1893. (Compare Sec. 1200 of the present Probate Code.)

Due notice having been given as required by the statute then existing, both with respect to the application for letters of administration and with respect to the petition for final distribution, it is immaterial whether or not the alleged brothers and sisters of the decedent had actual notice thereof, the decree being in rem. (82)

Murray v. Calkins, 191 Minn. 460, 254 N. W. 605; Cunha v. Hughes, 122 Cal. 111; The William Hill Co. v. Lawler, 116 Cal. 359; Mulcahey v. Dow, 131 Cal. 73; Goodrich v. Ferris, 145 Fed. 844; Beltran v. Hynes, 40 Cal. App. 177; Benning v. Nevis, 56 Cal. App. 192.

V.

The presumption is that everything was done which was requisite to sustain jurisdiction.

Estate of Davis, 151 Cal. 319; French v. Phelps, 20 Cal. App. 101; Dane v. Layne, 10 Cal. App. 366; Benning v. Nevis, 56 Cal. App. 192.

VI.

The claim is barred by laches. In addition to authorities cited on behalf of defendant Ira Jones, et al., see Holmberg v. Anchell, 24 F. Supp. 594, at 602, holding that to overcome the presumption that a claim is stale, it is necessary among other things to show that the plaintiff has used due

diligence under the circumstances in pressing his claim as against the defendants whom he seeks to hold, "and that said defendants were not prejudiced by any delay in so doing."

VII.

The Court lacks jurisdiction of necessary and indispensable parties, the heirs and legatees of Mary Frances Sherwood Hopkins and Moses Hopkins.

The Court cannot proceed without such indispensable parties.

O'Brien v. Markham, 17 F. Supp. 633. (83)

Service of the foregoing Motion, Affidavit and Points and Authorities, by copy, is hereby admitted this 8th day of August, 1947.

BUSICK & BUSICK,
S. J. BENNETT,
CHARLES H. SECCOMBE,
WALTER H. SILER,
CARLYLE HIGGINS,
Attorneys for Plaintiffs. (84)

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Thursday, the 18th day of September, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Dal M. Lemmon, District Judge.

[Title of Court and Cause.]

This case came on regularly for hearing on the motions to dismiss; to quash service of summons and hearing on proposed interrogatories. Charles H. Seccombe, Esq., C.O. Busick, Esq., C. W. Higgins, Esq. and S. J. Bennett, Esq., were present for and on behalf of the plaintiffs. E. J. Foulds, Esq., Horace Wulff, Esq., Edward D. Landels, Esq. and Royal A. Handlos, Esq. and J. Francis O'Shea, Esq. were present for and on behalf of the defendants. Thereupon Mr. Handlos, Mr. Foulds, Mr. O'Shea and Mr. Landels were heard in support of the motion to dismiss and Mr. Handlos introduced and filed Defendants' Exhibits A and B. The parties hereto entered into an oral stipulation that the Central Pacific Railroad Co. appear herein as a party to the Southern Pacific Company's motion to dismiss; that the motion to quash service of summons and the motion to strike plaintiff's First Amendment to Plaintiff's Complaint be withdrawn. Thereupon Mr. Busick, Mr. Seccombe and Mr. Bennett were heard in opposition to the motion to dismiss. After hearing the Attorneys, it is Ordered

that the Plaintiffs be and they are hereby allowed to file affidavits in opposition to the motion. to dismiss. It is further Ordered that the Plaintiffs be and they are hereby permitted to file their proposed interrogatories and the Defendants are allowed a reasonable time in which to file cross-interrogatories. It is further Ordered this case be and the same is hereby continued to September 26, 1947.

State of North Carolina,
County of Gilford—ss.

Jones M. Griffin, being first duly sworn deposes and says:

That he is of the age of 75 years and resides in Gilford County, North Carolina, in which county affiant has resided all his life; that he is a direct descendant of Rebecca Hopkins Griffin, who was a sister of Mark Hopkins; that said sister of Mark Hopkins and all the other antecedents of affiant are now dead; due to the distance from North Carolina to California, to-wit; about 3,000 miles; affiant and other heirs of Mark Hopkins residing in North Carolina did not learn of the death of Mark Hopkins until some years after 1878; at which time upon inquiry of several of said heirs they were informed by Moses Hopkins, a brother of said decedent, that Mark Hopkins had died leaving a wife and nine children. With this information the matter of any Estate of Mark Hopkins was dismissed from the minds of the plaintiffs, heirs of Mark Hopkins, until about the year 1925, affiant and other heirs of Mark Hopkins in North Carolina first learned

that Mark Hopkins died intestate and left no wife and children and left an estate.

That affiant and other heirs in North Carolina thereupon held a meeting and proceeded to obtain information as to the Estate.

That thereupon investigations were made of records in the State of North Carolina, Virginia and other Eastern states and numerous interviews were had in these several states to obtain the necessary evidence of the lineage of affiant and the other heirs of said Mark Hopkins.

That said investigations were carried on with thoroughness over a number of years and not only disclosed the sources of evidence of the relationship of affiant and other heirs of Mark Hopkins but also disclosed that Mary Frances Sherwood Hopkins was not the wife of Mark Hopkins, deceased, and that Samuel F. Hopkins was not a brother of said Mark Hopkins, deceased.

That investigations thereupon were conducted in the City and County of San Francisco, California, the residence of Mark Hopkins at the time of his death.

That it was then learned that the records of all proceedings in the Matter of the Estate of Mark Hopkins, deceased, had been destroyed in the fire of 1906.

Upon investigation it was found that one, W. Percy McCandless, et al. had filed a petition on August 18, 1925, verified by James H. Longden, Attorney, in the Superior Court of the State of California, in and for the City and County of San

Francisco, being No. 8494, relating and pertaining to the estate of Mark Hopkins and that said petition had been withdrawn on February 25, 1927, by the petitioner. And affiant states that said W. Percy McCandless was not an heir of Mark Hopkins nor a descendant of Edward and Hannah Crow Hopkins, the parents of said Mark Hopkins, or in any manner related to Mark Hopkins.

That it was also learned that one, F. B. McCandless of the State of Washington had filed in the Superior Court of the State of California, in and for the City and County of San Francisco, being No. 38991, a Will, and had petitioned said Court, that said Will be admitted to probate as the last Will and Testament of Mark Hopkins, deceased, and that he, said petitioner, be granted letters thereon; that in said proceeding one, John Marshall Jones Freeman had filed an Answer protesting the probate of said Will and alleging that it was a forged instrument.

That the attorney for the petitioner, having admitted at the hearing in open Court that said Will was a forged instrument, the Will was denied admission to probate; and affiant alleges that said F. B. McCandless was not a descendant of Edward and Hannah Crow Hopkins, father and mother of Mark Hopkins.

That during the years from 1925 to the date of the commencement of this action, affiant and other heirs of Mark Hopkins residing in the State of North Carolina, pursued with diligence, investigations of the Estate of Mark Hopkins, to ascertain

the facts regarding the existence and location of the Estate of Mark Hopkins, deceased, if any, and in the year 1945, ascertained from the records mentioned in plaintiffs' complaint, of the fraudulent acts of the Administratrix and Administrator of said Estate, and of the proceedings had in the probate of said Estate. In such investigation it was necessary, in order to ascertain the facts by reason of the San Francisco fire of 1906, to investigate the records in practically every County in the State of California, before they obtained knowledge of the frauds of said Administratrix and Administrator.

That it was not until 1945 that such investigations disclosed that the bulk of the Estate of Mark Hopkins was not set out nor distributed in the decree of distribution; that Mary Frances Sherwood Hopkins, Moses Hopkins and Samuel F. Hopkins had fraudulently conspired together to attempt to transfer said real estate without the knowledge or consent of the Court having jurisdiction of the probate proceedings or authority of said Court, as shown by Exhibits A., C., and D. of Plaintiffs' Complaint, and had conspired together to profit by said fraudulent acts and attempted transfers to defraud affiant and the other lineal descendants of the brothers and sisters of Mark Hopkins and heirs of his said estate as set forth in plaintiffs' complaint herein; that Moses Hopkins, the administrator of said Estate, had fraudulently, and as a part of said conspiracy, reported to said Court as appears from the decree of dis-

tribution Exhibit A., certain personal property to wit: stocks and bonds of railroad and other corporations which at the time of the granting of said decree were no longer in existence and failed to report to the Court as shown by the inventory, property, of the value of approximately twenty-five million (\$25,000,000.00), that was known and in the hands of the administrator at the time of said purported distribution.

/s/ JONES M. GRIFFIN.

Subscribed and sworn to before me this 29th day of September, 1947.

(Seal) /s/ M. W. NASH,

Clerk of Municipal in and for the County of Gilford and City of High Point, State of North Carolina.

AFFIDAVIT OF SERVICE BY MAIL

(C. C. P. 1013A)

(Must be attached to original or a true copy of paper served)

No. 4811-Latta, et al. vs. Western Investment Co.,
a Corp., et al.

State of California,
County of Sacramento—ss.

Ramona A. Furrow, being sworn, says that she is a citizen of the United States, over 18 years of age, a resident of Sacramento County, and not a party to the within **action**.

That affiant's business address is 604 Bank of America Bldg., Sacramento, California.

That affiant served a copy of the attached affidavit of Jones M. Griffin by placing said copy in an envelope addressed to Messrs. Landels and Weigel at their office address, 275 Bush Street, San Francisco, California, which envelope was then sealed and postage fully prepaid thereon, and thereafter was on October 2nd, 1947, deposited in the United States mail at Sacramento, California.

That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

Subscribed and sworn to before me on October 2nd, 1947.

(Seal) /s/ CHARLES O. BUSICK.

Notary Public in and for said
county and state.

/s/ RAMONA A. FURROW.

[Endorsed]: Filed Oct. 2, 1947. C. W. Galbreath,
Clerk.

[Title of District Court and Cause.]

ORDER

Sixty-four years elapsed between the entry of the decree of distribution attacked herein and the commencement of this action. The records in the probate proceeding were destroyed in the San Francisco fire of 1906, the lips of the two persons who are claimed to have acted fraudulently, as well as those of most if not all the other witnesses, are

sealed in death, memories of living witnesses are dimmed through the passage of time and the property here involved has passed to other hands. Under these circumstances, plaintiffs must allege facts which negative laches. Plaintiffs allege discovery by them of the facts first in 1945. There is no averment as to whether their ancestors or any of them knew the facts during their lifetimes. If an ancestor's right was barred it did not revive. It is not alleged that none of the relatives of the estate had knowledge of the falsity or of the true facts. It is also very questionable whether there is a sufficient explanation why the facts could not have been discovered by either the ancestors or plaintiffs during this long interval.

The averments of intrinsic fraud do not avail plaintiffs. Neither may they predicate a cause upon matters which are finally determined in the decree, however erroneously they may have been decided.

It is also to be noted that the decree of distribution was entered in November, 1883. The fraudulent representations upon which plaintiff would predicate fraud are alleged [86] to have been made in the "early eighties." This is an evasive allegation. If they were made after the decree became final they do not amount to actionable fraud.

The motions to dismiss are granted.

Dated April 27, 1948.

DAL M. LEMMON,

United States District Judge.

Entered in Civil Docket April 28, 1948.

[Endorsed]: Filed April 27, 1948. [87]

[Title of District Court and Cause.]

MEMORANDUM AND ORDER

Counsel for plaintiffs calls the court's attention to the paragraph beginning on line 20 of page 13 of their complaint. It is there alleged that the heirs of Mark Hopkins "never knew of the aforesaid false and fraudulent acts of said administrator." This must be read in connection with the preceding clause "That at and during the whole period of probate of said estate * *." This is not an allegation that the fraud was not discovered subsequent to the conclusion of the probate. The averments in paragraph 18, to which attention is also called, are to the effect that the plaintiffs and their ancestors did not receive notice of the petition for settlement of the account and final distribution and "never knew that the purported decree of distribution had been ordered or made or entered" does not remedy the want of allegation that the fraud was not discovered by the ancestors during their lifetimes.

Plaintiffs' motion to set aside the order of dismissal is denied. The motion to amend the order is granted to the extent of this memorandum; otherwise it is denied.

Dated: June 17, 1948.

DAL M. LEMMON,

United States District Judge.

[Endorsed]: Filed June 17, 1948. [88]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Estella Latta, Jones M. Griffin and Alwin Chambers, Plaintiffs above-named, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit, from the Order and Judgment granting defendants' Motions to Dismiss the above-entitled action, made and entered on the 27th day of April, 1948, and from the Order Denying Plaintiffs' Motion for a new trial and to set aside the Order of Dismissal and [89] from the Order Amending the Original Order in part and denying Plaintiffs' Motion to Amend the Order Dismissing said action, made and entered on the 17th day of June, 1948, and from the whole thereof.

Dated: June 23rd, 1948.

BUSICK & BUSICK,
S. J. BENNETT,
CHARLES H. SECCOMBE,
Attorneys for Plaintiffs.

[Endorsed]: Filed June 24, 1948. [90]

[Title of District Court and Cause.]

POINTS UPON WHICH APPELLANTS RELY

1. The Court erred in granting defendants' motion to dismiss.
2. That under the rules of the Court in force

when this action was filed, and motion made and submitted, (September 18, 1947) limitations and laches were matters of defense that must be pleaded.

3. That laches does not begin to run until there is full knowledge and notice of the facts.

4. That the Complaint specifically alleges that Plaintiffs and their ancestors had no knowledge or notice of the fraud or concealment of the facts, prior to 1945.

5. That the Complaint alleges facts showing that plaintiffs have used due diligence.

6. That where there is concealment of facts, or where plaintiffs have been misled by the interested party, laches does not run until full discovery of the facts.

7. That laches or limitations do not run against a void instrument, or a judgment procured by extrinsic fraud, or a judgment procured where the court does not have the authority to [91] render the same.

8. That the appointment of Moses Hopkins as Administrator, and the proceedings had thereafter, are void, in that the allegations of the complaint show that Moses Hopkins had been, prior to said appointment, convicted of an infamous crime.

9. That the decree is void by reason of the fraud practiced upon the court and the heirs, and other reasons, set out as follows, to wit:

(a) In the filing of the applications for Letters of Administration, both Moses Hopkins and Mary Frances Sherwood Hopkins, failed to furnish the

court with the names and addresses of the heirs other than Moses Hopkins and the heirs had no notice and no opportunity to be heard, as shown on the face of the decree.

(b) That Moses Hopkins, in filing his report, reported only a minor portion of the real and personal property belonging to said estate, and on the other hand, reported property that was not in existence at the time.

(c) That the decree failed to distribute all of the cash on hand, to wit: \$816.00.

(d) That the Court exceeded its authority in attempting to distribute three-fourths of the estate to Mary Frances Sherwood-Hopkins, if she was the wife of deceased.

(e) That the decree fails to describe the real estate attempted to be distributed, and recognized and based its distribution upon an agreement between Mary Frances, Moses, and Samuel, and is indefinite in its findings.

(f) That the decree recognized Mary Frances and Samuel as heirs and distributees, as was represented by the Administrator, Moses Hopkins. [92]

(g) That the deed from Moses and Samuel Hopkins to Mary Frances Sherwood-Hopkins, (Exhibit "B") is void for lack of description of the property attempted to be conveyed, and was executed while the Grantee was acting in a fiduciary capacity as Administratrix.

(h) That the deed from Mary Frances, Moses, and Samuel to Huntington et al, (Exhibit "C") is void in that it was executed without an order or

confirmation of the Probate Court, and while Mary Frances was acting as Administratrix, and signed by her individually, and said deed fails to show such authority on the face thereof. And the same thing applies to the deed executed by Ellen Colton to the Ione Coal and Iron Co., in which Mary Frances, Moses, and Samuel joined in attempting to pass title to the interest held by the Estate. (Exhibit "D".)

(i) That the conveyance of all the property referred to in paragraphs 49 and 50 of the Complaint is null and void, for the reason that said property was not sold under order of the Court, and said sale was not reported to or confirmed by the Probate Court, and the consideration received therefor was never accounted for in the Estate.

(j) That the defendants took said purported title to the properties referred to in Paragraphs 49 and 50 of the complaint, with Notice of the defects of record, and are not innocent purchasers for value.

(k) That said deeds were not executed by all the heirs of Mark Hopkins.

Dated: June 25th, 1948.

BUSICK & BUSICK,
S. J. BENNETT,
CHARLES H. SECCOMBE,
Attorneys for Plaintiffs.

[Endorsed]: Filed June 26, 1948. [93]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

To the clerk of the above entitled court and to the attorney for defendants:

Plaintiffs and Appellants above named hereby designate the portions of the Record, and proceedings to be contained in the Record on Appeal to the Circuit Court in the above entitled action.

1. The Complaint, as amended.
2. Defendants' Motions to dismiss action.
3. Order and Judgment of the Court, on motion to dismiss action.
4. Order of the Court on Motion for New Trial, or to amend Order Dismissing Action.

Dated: June 25th, 1948.

BUSICK & BUSICK,
S. J. BENNETT,
CHARLES H. SECCOMBE,
Attorneys for Plaintiffs.

[Endorsed]: Filed June 26, 1948. [94]

[Title of District Court and Cause.]

DESIGNATION OF ADDITIONAL PORTION
OF THE RECORD ON APPEAL UNDER
RULE 75(a)

To the clerk of the above entitled court and to the attorneys for plaintiffs:

The undersigned, the defendants in the above entitled action, hereby designate additional portions

of the record and proceedings to be contained in the record on appeal to the Circuit Court of Appeals, in and for the Ninth Circuit, in the above entitled action:

1. Affidavit of Royal E. Handlos in support of motion to dismiss and the exhibits thereto attached.

2. Minute order of September 18, 1947, wherein it was ordered that the Central Pacific Railroad Company appear therein as a party to Southern Pacific Company's motion to dismiss.

Dated: July 1, 1948.

/s/ ROYAL E. HANDLOS,
Attorney for Ira Jones, Claude A. Beagle, Vera G. Beagle, Roger L. Bondi, Joseph Devincenzi, Matilda Devincenzi, Verne Lewis, Lera M. Lewis, Drusilla M. Peip, Fred Bardoni and Louis H. Marks. [95]

/s/ LANDELS & WEIGEL,
Attorneys for Vera Peniz, Charles S. Howard Company, Inc., John V. Noonan and Jean Lillard.

/s/ DRIVER, DRIVER & DRIVER,
Attorneys for Grace Lee, Fred Fong and Armade Zambra, also known as Vicente Armada Zambra, Confucius Church of Sacramento, a corporation.

/s/ J. FRANCIS O'SHEA,
Attorney for Jennie T. Stoll.

/s/ T. L. CHAMBERLAIN,
Attorney for Sacramento Investment Company, a corporation.

/s/ DEVLIN & DEVLIN &
DIEPENBROCK,

Attorneys for Southern Pacific Railroad Company,
a corporation, and Central Pacific Railroad
Company, a corporation.

/s/ R. S. MYERS and
E. J. FOULDS,

Attorneys for Southern Pacific Railroad Company,
a corporation, and Central Pacific Railroad
Company, a corporation.

Due and Personal Service by Receipt of Copy
hereof is hereby Admitted this 1st Day of July,
1948.

BUSICK & BUSICK,
Attorney for Plaintiffs.

[Endorsed]: Filed July 1, 1948. [96]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
AND DOCKETING RECORD ON APPEAL

Good cause therefore appearing, it is Hereby Ordered that the time for filing the Record on Appeal in the above entitled action, and docketing the appeal, be and the same is, hereby extended to and including September 1, 1948.

Dated: July 15th, 1948.

DAL M. LEMMON,
Judge of the United States District Court for the
Northern District, of California.
AM. Rule 73 (g).

[Endorsed]: Filed July 15, 1948. [97]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 97 pages, numbered 1 to 97, inclusive, contain a full, true and correct transcript of certain records and proceedings in the case of Estella Latta, et al. vs. Western Investment Company, et al., No. 5811, as the same now remain on file and of record in this office; said record having been prepared pursuant to and in accordance with Designation and Counter-designation of Portions of the Record to be con-

tained in the Record on Appeal, copies of which are embodied herein.

I further certify that the cost of preparing and certifying the foregoing Record on Appeal is the sum of Sixteen and 90/100 (\$16.90) Dollars, and that the same has been paid by me by the attorneys for the appellants herein.

In Witness Whereof, I have hereunto set my hand and the official seal of said District Court, this 21st day of July, A. D. 1948.

(Seal) C. W. CALBREATH,
Clerk. [98]

[Endorsed]: No. 11990. United States Court of Appeals for the Ninth Circuit. Estella Latta, Jones M. Griffin and Alwin Chambers, Appellants, vs. Western Investment Company, a Corporation, et al., Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division.

Filed: July 22, 1948.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

